THE

PRINCIPLES

OF

NATURAL AND POLITIC

LAW.

IN TWO VOLUMES.

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THE

PRINCIPLES

OF

POLITIC LAW;

BEING A SEQUEL TO THE PRINCIPLES OF THE LAW OF NATURE.

PART I.

Which treats of the origin and nature of civil society, of sovereignty in general, of its peculiar characteristic, limitations, and essential parts.

CHAP. I.

Containing a few general and preliminary reflections, which serve as an introduction to this and the following parts.

I. WHATEVER has been hitherto explained, concerning the rights and duties of man, relates to the natural and primitive society, established by God himself, independent of human institution. We must now treat of civil society, or the body politic, which is deservedly esteemed the completest of societies, and to which the name of *State* has been given by way of preference.

II. For this purpose we shall repeat here the substance of some principles, established in the preceding volume, and we shall give a further explication of others relative to this subject.

1. Human society is originally and in itself a state of equality and independence.

2. The institution of sovereignty destroys this independence.

3. This institution does not subvert natural society.

4. On the contrary it contributes to strengthen and cement it.

III. To form therefore a just idea of civil society we must call it natural society itself, modified in such a manner, that there is a sovereign presiding over it, on whose will whatever relates to the welfare of the society ultimately depends; to the end that, by these means mankind may attain, with greater certainty, that happiness, to which they all naturally aspire.

IV. The institution of civil societies produces some new relations amongst mankind; I mean such as subsist between those different bodies or communities, which are called states or nations, from which the law of nations and civil polity are derived.

V. In fact so soon as states are formed, they acquire, in some measure, personal properties; and consequently we may attribute the same rights and obligations to them, as are attributed to individuals, considered as members of society. And indeed it is evident, that, if reason imposes certain duties on individuals towards each other, it prescribes likewise those very same rules of conduct to nations, (which are composed only of men) in the intercourse, which they may have with each other.

VI. We may therefore apply to kingdoms and nations the several maxims of natural law, hitherto explained; and the same law, which is called natural when speaking of individuals, is distinguished by the name of the law of nations, when applied to men, considered as members forming those different bodies, known by the name of states or nations.

VII. To enter into this subject we must observe, that the natural state of nations, with respect to each other, is that of society and peace. This society is likewise a state of equality and independence, which establishes between them a right of equality, by which they are obliged to have the same regard for each other. The general principle therefore of the law of nations is nothing more than the general law of sociability, which obliges nations to the same duties, as are prescribed to individuals.

VIII. Thus the law of natural equality, that which prohibits our injuring any person, and commands the reparation of damage done, the law likewise of beneficence, of fidelity to our

engagements, &c. are so many laws in regard to nations, which impose both on the people and on their respective soveriegns the same duties, as are prescribed to individuals.

IX. It is a point of some importance to attend to the nature and origin of the law of nations, such as hath been here explained; for it follows thence, that the law of nations is of equal authority with the law of nature itself, of which it constitutes a part, and that they are equally sacred and venerable, since both have the Deity for their author.

X. There cannot even be any other law of nations really obligatory, and intrinsically invested with the force of a law. For, since all nations are in respect to each other in a state of perfect equality, it is beyond contradiction, that, if there be any common law betwixt them, it must necessarily have God, their common sovereign, for its author.

XI. As to what concerns the tacit consent or customs of nations, on which some doctors establish a law of nations, they cannot of themselves produce a real obligation. For from this only, that several nations have behaved towards each other for some time after a certain manner, it does not follow, that they have laid themselves under a necessity of acting constantly so for the future, and much less, that every other nation is obliged to conform to this custom.

XII. All that can be said is, that, when once a particular usage or custom is introduced between nations, that have a frequent intercourse with each other, these nations are, and may reasonably be supposed to submit to this usage, unless they have in express terms declared, that they will not conform to it any longer; and this is all the effect, that can be attributed to the received usages between nations.

XIII. This being premised, we may distinguish two sorts of laws of nations, one necessary, which is obligatory of itself, and no way differs from the law of nature; the other arbitrary and free, founded only on a kind of tacit convention, and deriving all its force from the law of nature, which commands us to be faithful to our engagements.

XIV. What has been said concerning the law of nations furnishes princes with several important reflections; among others,

that since the law of nations is in reality nothing else, but the law of nature itself, there is but one and the same rule of justice for all mankind; insomuch that those princes, who violate them, are guilty of as great a crime, as private people; especially as their wicked actions are generally attended with more unhappy consequences, than those of private people.

XV. Another consequence, that may be drawn from the principles we have established, relating to the law of nature and nations, is to form a just idea of that science so necessary to the directors of nations, which is called *Policy*. By policy therefore is meant that knowledge or ability, by which a sovereign provides for the preservation, security, prosperity, and glory of the nation he governs, without doing any prejudice to other people, but rather consulting their advantage, as much as possible.

XVI. In short that, which is called prudence, in respect to private persons, is distinguished by the name of policy, when applied to sovereigns; and as that mischievous ability, by which a person seeks his own advantage to the detriment of others, and which is called artifice or cunning, is deserving of censure in individuals, it is equally so in those princes, whose policy aims at procuring the advantage of their own nation, to the prejudice of what they owe to other people, in virtue of the laws of humanity and justice.

XVII. From what has been said of the nature of civil society in general, it is easy to comprehend, that, among all human institutions, there is none more considerable than this; and that, as it embraces whatever is interesting to the happiness of society, it is a very extensive subject, and consequently that it is important alike both to princes and people to have proper instructions upon this head.

XVIII. That we may reduce the several articles relative to this matter into some order, we shall divide our work into four parts.

The first will treat of the origin and nature of civil societies, of the manner, in which states are formed, of sovereignty in general, its proper characteristics, its limitations and essential parts.

In the second we shall explain the different forms of government, the various ways of acquiring or losing sovereignty, and the reciprocal duties of sovereigns and subjects.

The third will contain a more particular inquiry into those essential parts of sovereignty, which are relative to the internal administration of the state, such as the legislative power, the supreme power in respect to religion, the right of inflicting punishments, that, which the sovereign has over the estates and effects, contained in his dominions, &c.

In the fourth in fine we shall explain the rights of sovereigns with regard to foreigners, where we shall treat of the right of war, and of whatever is relative to that subject, of alliances, and other public treaties, and likewise of the rights of ambassadors.

CHAP. II.

Of the real origin of civil societies.

I. CIVIL society is nothing more, than the union of a multitude of people, who agree to live in subjection to a sovereign, in order to find, through his protection and care, the happiness, to which they naturally aspire.

II. Whenever the question concerning the origin of civil society is started, it may be considered in two different ways; for either I am asked my opinion concerning the origin of governments in reality and in fact; or else in regard to the right of congruity and fitness; that is, what are the reasons, which should induce mankind to renounce their natural liberty, and to prefer a civil state to that of nature? Let us see first what can be said in regard to the fact.

III. As the establishment of society and civil government is almost coeval with the world, and there are but very few records extant of those first ages; nothing can be advanced with certainty concerning the real origin of civil societies. All, that political writers say upon this subject, is reduced to conjectures, that have more or less probability.

IV. Some attribute the origin of civil societies to paternal authority. These observe, that all the ancient traditions inform us, that the first men lived a long time; by this longevity,

joined to the multiplicity of wives, which was then permitted, a great number of families saw themselves united under the authority of one grandfather; and as it is difficult for a society, any thing numerous, to maintain itself without a supreme authority, it is natural to imagine, that their children, accustomed from their infancy to respect and obey their fathers, voluntarily resigned the supreme command into their hands, so soon as they arrived to a full maturity of reason.

V. Others suppose, that the fear and diffidence, which mankind had of one another, was their inducement to unite together under a chief, in order to shelter themselves from those mischiefs, which they apprehended. From the iniquity of the first men, say they, proceed war, as also the necessity, to which they were reduced, of submitting to masters, by whom their rights and privileges might be determined.

VI. Some there are in fine, who pretend, that the first beginnings of civil societies are to be attributed to ambition, supported by force or abilities. The most dexterous, the strongest, and the most ambitious reduced at first the simplest and weakest into subjection; those growing states were afterwards insensibly strengthened by conquests, and by the concurrence of such, as became voluntary members of those societies.

VII. Such are the principal conjectures of political writers in regard to the origin of societies; to which let us add a few reflections.

The first is, that, in the institution of societies, mankind in all probability thought rather of redressing the evils, which they had experienced, than of procuring the several advantages resulting from laws, from commerce, from the arts and sciences, and from all those other improvements so frequently mentioned in history.

2. The natural disposition of mankind, and their general manner of acting, do not by any means permit us to refer the institution of all governments to a general and uniform principle. More natural it is to think, that different circumstances gave rise to different states.

3. We behold without doubt the first image of government in democratic society, or in families; but there is all the probability in the world, that it was ambition, supported by force or abilities, which first subjected the several fathers of families under the dominion of a chief. This appears very agreeable to the natural disposition of mankind, and seems further supported by the manner, in which the scripture speaks of Nimrod,* the first king mentioned in history.

4. When such a body politic was once framed, several others joined themselves to it afterwards through different motives; and other fathers of families, being afraid of insults or oppression from those growing states, determined to form themselves into the like societies, and to choose to themselves a chief.

5. Be this as it may, we must not imagine, that those first states were such, as exist in our days. Human institutions are ever weak and imperfect in their beginnings, there is nothing but time and experience, that can gradually bring them to perfection.

The first states were in all probability very small. Kings in those days were only a kind of chieftains, or particular magistrates, appointed for deciding disputes, or for the command of armies. Hence we find by the most ancient histories, that there were sometimes several kings in one and the same nation.

VIII. But to conclude, whatever can be said in regard to the original of the first governments consists, according to what we have already observed, in mere conjectures, that have only more or less probability. Besides this is a question rather curious, than useful or necessary; the point of importance, and that particularly interesting to mankind, is to know whether the establishment of government and of supreme authority, was really necessary, and whether mankind derive from it any considerable advantages. This is what we call the right of congruity or fitness, and what we are going now to examine.

* See Genesis, c. x. ver. 8, and seq.

CHAP. III.

Of the right of congruity or fitness with regard to the institution of civil society, and the necessity of a supreme authority: of civil liberty; that it is far preferable to natural liberty, and that the state is of all human conditions the most perfect, the most reasonable, and consequently the natural state of man.

I. WE are here to inquire, whether the establishment of civil society, and of a supreme authority, was absolutely necessary to mankind, or whether they could not live happy without it? And whether sovereignty, whose original is owing perhaps to usurpation, ambition, and violence, does not include an attempt against the natural equality and independency of man? These are without doubt questions of importance, and which merit the utmost attention.

II. I grant, at first setting out, that the primitive and original society, which nature has established amongst mankind, is a state of equality and independence; it is likewise true, that the law of nature is that, to which all men are obliged to conform their actions; and in fine it is certain, that this law is in itself most perfect, and the best adapted for the preservation and happiness of mankind.

III. It must likewise be granted, that if mankind, during the time they lived in natural society, had exactly conformed to nature's laws, nothing would have been wanting to complete their happiness, nor would there have been any occasion to establish a supreme authority upon earth. They would have lived in a mutual intercourse of love and beneficence, in a simplicity without state or pomp, in an equality without jealousy, strangers to all superiority, but that of virtue, and to every other ambition, than that of being disinterested and generous.

IV. But mankind were not long directed by so perfect a rule; the vivacity of their passions soon weakened the force of nature's law, which ceased now to be a bridle sufficient for them, so that they could no longer be left to themselves thus weakened and blinded by their passions. Let us explain this a little more particularly.

V. Laws are incapable of contributing to the happiness of society, unless they be sufficiently known. The laws of nature cannot be known otherwise to man, than as he makes a right use of his reason; but as the greatest part of mankind, abandoned to themselves, listen rather to the prejudices of passion than to reason and truth, it thence follows, that, in the state of natural society, the laws of nature were known but very imperfectly, and consequently, that, in this condition of things, man could not lead a happy life.

VI. Besides, the state of nature wanted another thing, necessary for the happiness and tranquillity of society, I mean a common judge, acknowledged as such, whose business it is to decide the differences, that every day arise betwixt individuals.

VII. In this state, as every one would be supreme arbiter of his own actions, and would have a right of being judge himself both of the laws of nature and of the manner, in which he ought to apply them, this independence and excessive liberty could not but be productive of disorder and confusion, especially in cases, where there happened to be any clashing of interests or passions.

VIII. In fine, as in the state of nature no one had a power of enforcing the execution of the laws, nor an authority to punish the violation of them, this was a third inconveniency of the state of primitive society, by which the efficacy of naturul laws was almost entirely destroyed. For, as men are framed, the laws derive their greatest force from the coercive power, which by exemplary punishments, intimidates the wicked, and balances the superior force of pleasure and passion.

IX. Such were the inconveniences, that attended the state of nature. By the excessive liberty and independence, which mankind enjoyed, they were hurried into perpetual troubles; for which reason they were under an absolute necessity of quitting this state of independence, and of seeking a remedy against the evils, of which it was productive; and this remedy they found in the establishment of civil society and a sovereign authority.

X. But this could not be obtained without effecting two things equally necessary; the first was to unite together by means of a more particular society; the second, to form this

man could not enjoy all the advantages of liberty, but inasmuch as this liberty was made subject to reason, and the laws of nature were the rule and measure of the exercise of it. But if it be true in fact, that the state of nature was attended with the several inconveniences already mentioned, inconveniences, which almost effaced the impression and force of natural laws, it is a plain consequence, that natural liberty must have greatly suffered thereby, and that by not being restrained within the limits of the law of nature, it could not but degenerate into licentiousness, and reduce mankind to the most frightful and the most melancholy of situations.

XX. As they were perpetually divided by contentions, the strongest oppressed the weakest; they possessed nothing with tranquillity; they enjoyed no repose; and what we ought particularly to observe is, that all these evils were owing chiefly to that very independence, which mankind were possessed of in regard to each other, and which deprived them of all security of the exercise of their liberty; insomuch that, by being too free, they enjoyed no freedom at all; for freedom there can be none, when it is not subject to the direction of laws.

XXI. If it be therefore true, that the civil state gives a new force to the laws of nature, if it be true also, that the establishment of sovereignity secures, in a more effectual manner, the observance of those laws, we must conclude, that the liberty, which man enjoys in this state, is far more perfect, more secure, and better adapted to procure his happiness, than that, which he was possessed of in the state of nature.

XXII. True it is, that the institution of government and sovereignty is a considerable limitation to natural liberty, for man must renounce that power of disposing of his own person and actions, in a word, his independence. But what better use could mankind make of their liberty, than to renounce every dangerous tendency it had in regard to themselves, and to preserve no more of it, than was necessary to procure their own real and solid happiness?

XXIII. Civil liberty is therefore, in the main, nothing more than natural liberty, divested of that part of it, which formed the independence of individuals, by the authority, which they have conferred on their sovereign.

XXIV. This liberty is still attended with two considerable advantages, which natural liberty had not. The first is the right of insisting, that their sovereign shall make good use of his authority, agreeably to the purposes, for which he was intrusted with it. The second is the security, which prudence requires, that the subjects should reserve to themselves for the execution of their former right, a security absolutely necessary, and without which the people can never enjoy any solid liberty.

XXV. Let us therefore conclude, that, to give an adequate definition of civil liberty, we must say, that it is natural liberty itself, divested of that part, which constituted the independence of individuals, by the authority, which it confers on sovereigns, and attended with a right of insisting on his making a good use of his authority, and with a moral security, that this right will have its effect.

XXVI. Since civil liberty therefore is far preferable to that of nature, we may safely conclude, that the civil state, which procures this liberty to mankind, is of all human states the most perfect, the most reasonable, and of course the true natural state of man.

XXVII. And indeed, since man, by his nature, is a free and intelligent being, capable of discovering his state by himself, as well as its ultimate end, and of taking the necessary measures to attain it, it is properly in this point of view, that we must consider his natural state; that is, the natural state of man must be that, which is most agreeable to his nature, to his constitution, to reason, to the good use of his faculties, and to his ultimate end; all which circumstances perfectly agree with the civil state. In short, as the institution of government and supreme authority brings men back to the observance of the laws of nature, and consequently to the road of happiness, it makes them return to their natural state, from which they had strayed by the bad use, which they made of their liberty.

XXVIII. The reflections we have here made on the advantages, which men derive from government, deserve very great attention.

1. They are extremely proper for removing the false notions, which most people have upon this subject; as if the civil state

could not be established but in prejudice to their natural liberty; and as if government had been invented only to satisfy the ambition of designing men, contrary to the interest of the rest of the community.

2. They inspire mankind with a love and respect for so salutary an institution, disposing them thus to submit voluntarily to whatever the civil society requires of them, from a conviction, that the advantages thence derived are very considerable.

3. They may likewise tend greatly to increase the love of one's country, the first seeds of which nature herself has implanted, as it were, in the hearts of all mankind, in order to promote, as it most effectually does, the happiness of society. Sextus Empiricus relates, "that it was a custom among the ancient Persians, upon the death of a king, to pass five days in a state of anarchy, as an inducement to be more faithful to his successor, from the experience they acquired of the inconveniences of anarchy, of the many murders, robberies, and every other mischief, with which it is pregnant."*

XXIX. As these reflections are proper for removing the prejudices of private people, so they likewise contain most excellent instructions even for sovereigns. For is there any thing better adapted for making princes sensible of the full extent of their duty, than to reflect seriously on the ends, which the people proposed to themselves, in entrusting them with their liberty, that is, with whatever is most valuable to them; and on the engagements into which they entered, by charging themselves with so sacred a deposit? When mankind renounced their independence and natural liberty, by giving masters to themselves, it was in order to be sheltered from the evils, with which they were afflicted, and in hopes, that, under the protection and care of their sovereign, they should meet with solid happiness. Thus have we seen, that by civil liberty mankind acquired a right of insisting upon their sovereign's using his authority agreeable to the design, with which he was entrusted with it, which was to render their subjects wise and virtuous, and thereby to promote their real felicity. In a word, whatever has been said concerning the advantages of the civil state, in preference to that of

* Advers. Mathemat. lib. 2. sect. 33. Vid. Herodot. lib. 1. cap. 96, & seq.

nature, supposes this state in its due perfection; and that both subjects and sovereign discharge their duties towards each other.

CHAP. IV.

Of the essential constitution of states, and of the manner, in which they are formed.

I. AFTER treating of the original of civil societies, the natural order of our subject leads us to enquire into the essential constitution of states, that is, into the manner, in which they are formed, and the internal frame of those surprising structures.

II. From what has been said in the preceding chapter it follows, that the only effectual method, which mankind could employ in order to screen themselves from the evils, with which they were afflicted in the state of nature, and to procure to themselves all the advantages wanting to their security and happiness, must be drawn from man himself, and from the assistance of society.

III. For this purpose it was necessary, that a multitude of people should unite in so particular a manner that their preservation must depend on each other, to the end, that they remain under a necessity of mutual assistance, and, by this junction of strength and interests, be able not only to repel the insults, against which each individual could not guard so easily, but also to contain those, who should attempt to deviate from their duty, and to promote more effectually their common advantage. Let us explain more particularly how this could be effected.

IV. Two things were necessary for this purpose.

1. It was necessary to unite forever the wills of all the members of the society in such a manner, that from that time forward they should never desire but one and the same thing, in whatever relates to the end and purpose of society. 2. It was requisite afterwards to establish a supreme power, supported by the strength of the whole body (by which means they might over awe those, who should be inclinable to disturb the

peace) and to inflict a present and sensible evil on such, as should attempt to act contrary to the public good.

V. It is from this union of wills and of strength, that the body politic or state results; and without it we could never conceive a civil society. For let the number of confederates be ever so great, if each man was to follow his own private judgment in things, relating to the public good, they would only embarrass one another; and the diversity of inclinations and judgments, arising from the levity and natural inconstancy of man, would soon demolish all concord, and mankind would thus relapse into the inconveniences of the state of nature. Besides, a society of that kind could never act long in concert, and for the same end, not maintain itself in that harmony, which constitutes its whole strength, without a superior power, whose business it is to serve as a check to the inconstancy and malice of man, and to oblige each individual to direct all his actions to the public utility.

VI. All this is performed by means of covenants; for this union of wills in one and the same person could never be so effected, as to actually destroy the natural diversity of inclinations and sentiments; but it is done by an engagement, which every man enters into, of submitting his private will to that of a single person, or of an assembly; insomuch that every resolution of this person or assembly, concerning things relative to the public security or advantage, must be considered, as the positive will of all in general, and of each in particular.

VII. With regard to the union of strength, which produces the sovereign power, it is not formed by each man's communicating physically his strength to a single person, so as to remain utterly weak and impotent; but by a covenant or engagement, whereby all in general and each in particular oblige themselves to make no use of their strength, but in such a manner, as shall be prescribed to them by the person, on whom they have, with one common accord, conferred the supreme authority.

VIII. By this union of the body politic under one and the same chief, each individual acquires, in some measure, as much strength, as the whole society united. Suppose for instance there are a million of men in the commonwealth, each man is

able to resist this million, by means of their subjection to the sovereign, who keeps them all in awe, and hinders them from hurting one another. This multiplication of strength in the body politic resembles that of each member in the human body; take them asunder, and their vigor is no more; but by their mutual union the strength of each increases, and they form altogether a robust and animated body.

IX. The state may be defined a society, by which a multitude of people unite together, under the dependance of a sovereign, in order to find, through his protection and care, the happiness, to which they naturally aspire. The definition, which Tully gives, amounts nearly to the same. *Multitudo juris consensu, et utilitatis communione sociata.* A multitude of people united together by a common interest, and by common laws, to which they submit with one accord.

X. The state is therefore considered as a body, or as a moral person, of which the sovereign is the chief or head, and the subjects are the members; in consequence of which we attribute to this person certain actions peculiar to him, certain rights, privileges, and possessions, distinct from those of each citizen, and to which neither each citizen, nor many, nor even altogether can pretend; but the sovereign only.

XI. It is moreover this union of several persons in one body, produced by the concurrence of the wills and the strength of every individual in one and the same person, that distinguishes the state from a multitude. For a multitude is only an assemblage of several persons, each of whom has his own will, with the liberty of judging, according to his own notions, of whatever is proposed to him, and of determining as he pleases; for which reason they can be said to have only one will. Whereas the state is a body, or a society, animated by one only soul, which directs all its motions, and makes all its members act after a constant and uniform manner, with a view to one and the same end, namely the public utility.

XII. But it will be here objected, that if the union of the will and of the strength of each member of the society, in the person of the sovereign, destroy neither the will nor the natural force of each individual; if they always continue in possession

of it; and if they are able in fact to employ it against the sovereign himself; what does the force of the state consist in, and what is it, that constitutes the security of this society? I answer, that two things contribute chiefly to maintain the state, and the sovereign, who is the soul of it.

The first is the engagement itself, by which individuals have subjected themselves to the command of a sovereign; an engagement, which derives a considerable force both from divine authority, and from the sanction of an oath. But as to vicious and ill disposed minds, on whom these motives make no impression, the strength of the government consists chiefly in the fear of those punishments, which the sovereign may inflict upon them, by virtue of the power, with which he is invested.

XIII. Now since the means, by which the sovereign is enabled to compel rebellious and refractory persons to their duty, consists in this, that the rest of the subjects join their strength with him for this end (for were it not for this, he would have no more power, than the lowest of his subjects) it follows that it is the ready submission of good subjects, that furnishes the sovereign with the means of repressing the insolent, and of maintaining his authority.

XIV. But provided a sovereign shows ever so small an attachment to his duty, he will always find it easy to fix the better part of his subjects in his interest, and of course to have the greatest part of the strength of the state in his hands, and to maintain the authority of the government. Experience has always shown, that princes need only a common share of virtue to be adored by their subjects. We may therefore affirm, that the sovereign is capable of deriving from himself the means, necessary for the support of his authority; and that a prudent exercise of the sovereignty, pursuant to the end, for which it was designed, constitutes at the same time the happiness of the people, and, by a necessary consequence, the greatest security of the government in the person of the sovereign.

XV. Tracing the principles here established in regard to the formation of states, &c. were we to suppose, that a multitude of people, who had lived hitherto independent of each other,

wanted to establish a civil society, we shall find a necessity for different covenants, and for a general decree.

1. The first covenant is that, by which each individual engages with all the rest to join forever in one body, and to regulate, with one common consent, whatever regards their preservation and their common security. Those, who do not enter into this first engagement, remain excluded from the new society.

2. There must afterwards be a decree made for settling the form of government; otherwise they could never take any fixt measures for promoting effectually, and in concert, the public security and welfare.

3. In fine, when once the form of government is settled, there must be another covenant, whereby, after having pitched upon one or more persons to be invested with the power of governing, those, on whom this supreme authority is conferred, engage to consult most carefully the common security and advantage, and the others promise fidelity and allegiance to the sovereign. This last covenant includes a submission of the strength and will of each individual to the will of the head of the society, as far as the public good requires; and thus it is, that a regular state and perfect government are formed.

XVI. What we have hitherto delivered may be further illustrated by the account we have in history concerning the foundation of the Roman state. At first we behold a multitude of people, who flock together with a view of settling on the banks of the Tiber; afterwards they consult about what form of government they shall establish, and, the party for monarchy prevailing, they confer the supreme authority on Romulus.*

XVII. And though we are strangers to the original of most states, yet we must not imagine, that what has been here said concerning the manner, in which civil societies are formed, is a mere fiction. For, since it is certain, that all civil societies had a beginning, it is impossible to conceive how the members, of which they are composed, could agree to live together, dependant on a supreme authority, without supposing the covenants abovementioned.

* See Dionysius Halicarn. lib. 2. in the beginning.

XVIII. And yet all political writers do not explain the origin of states after our manner. Some there are,* who pretend that states are formed merely by the covenant of the subjects with one another, by which each man enters into an engagement with all the rest not to resist the will of the sovereign, upon condition, that the rest on their side submit to the same engagement; but they pretend, that there is no original compact between the sovereign and the subjects.

XIX. The reason, why these writers give this explication of the matter, is obvious. Their design is to give an arbitrary and unlimited authority to sovereigns, and to deprive the subjects of every means of withdrawing their allegiance upon any pretext whatever, notwithstanding the bad use the sovereign may make of his uthority. For this purpose it was absolutely necessary to free kings from all restraint of compact or covenant between them and their subjects, which, without doubt, is the chief instrument of limiting their power.

XX. But notwithstanding it is of the utmost importance to mankind to support the authority of kings, and to defend it against the attempts of restless and mutinous spirits, yet we must not deny evident truths, or refuse to acknowledge a covenant, in which there is manifestly a mutual promise of performing things, to which they were not before obliged.

XXI. When I submit voluntarily to a prince, I promise him allegiance on condition, that he will protect me; the prince on his side promises me his protection on condition, that I will obey him. Before this promise, I was not obliged to obey him, nor was he obliged to protect me, at least by any *perfect* obligation; it is therefore evident, that there must be a mutual engagement.

XXII. But there is still something more; for, so far is the system, we are here refuting, from strengthening the supreme authority, and from screening it from the capricious invasions of the subject, that, on the contrary, nothing is of a more dangerous consequence to sovereigns, than to fix their right on such a foundation. For if the obligation of the subjects towards their princes is founded merely on the mutual covenant between

* A. Hobbes, de Cive, cap. v. § 7.

the subjects, by which each man engages for the sake of the rest to obey the sovereign, on condition, that the rest do the same for his sake; it is evident, that at this rate every subject makes the force of his engagement depend on the execution of that of every other fellow subject; and consequently, if any one refuses to obey the sovereign, all the rest stand released from their allegiance. Thus by endeavouring to extend the rights of sovereigns beyond their just limits, instead of strengthening, they rather inadvertently weaken them.

CHAP. V.

Of the sovereign, sovereignty, and the subjects.

I. THE sovereign in a state is that person, who has a right of commanding in the last resort.

II. As to the sovereignty we must define it the right of commanding civil society in the last resort, which right the members of this society have conferred on one and the same person, with a view to preserve order and security in the commonwealth, and in general to procure, under his protection and through his care, their own real happiness, and especially the sure exercise of their liberty.

III. I say in the first place, that sovereignty is the right of commanding civil society in the last resort, to show that the nature of sovereignty consists chiefly in two things.

The first is the right of commanding the members of the society, that is, of directing their actions with authority, or with a power of compelling.

The second is, that this right ought to be that of commanding in the last resort in such a manner, that every private person be obliged to submit, without a power left to any man of resisting. Otherwise, if this authority was not superior to every other upon earth, it could establish no order or security in the commonwealth, though these are the ends, for which it was established.

IV. In the second place I say, that it is a right conferred on a person, and not on a man, to denote that this person may

be not only a single man, but likewise a multitude of men, united in council, and forming only one will, by means of a plurality of suffrages, as we shall more particularly explain hereafter.

V. Thirdly I say to one and the same person to show, that sovereignty can admit of no share or partition, that there is no sovereign at all, when there are many, because there is no one, who commands then in the last resort, and none of them being obliged to give way to the other, their competition must necessarily throw every thing into disorder and confusion.

VI. I add in fine to procure their own happiness, &c. in order to point out the end of sovereignty, that is the welfare of the people. When sovereigns once lose sight of this end, when they pervert it to their private interests, or caprices, sovereignty then degenerates into tyranny, and ceases to be a legitimate authority. Such is the idea, we ought to form of a sovereign and of sovereignty.

VII. All the other members of the state are called subjects, that is, they are under an obligation of obeying the sovereign.

VIII. Now a person becomes a member or subject of a state two ways, either by an express or by a tacit covenant.

IX. If by an express covenant, the thing admits of no difficulty. But, with regard to a tacit covenant, we must observe, that the first founders of states, and all those, who afterwards became members thereof, are supposed to have stipulated, that their children and descendants should, at their coming into the world, have the right of enjoying those advantages, which are common to all the members of the state, provided nevertheless that these descendants, when they attain to the use of reason, be on their part willing to submit to the government, and to acknowledge the authority of the sovereign.

X. I said provided the descendants acknowledged the authority of the sovereign; for the stipulation of the parents cannot, in its own nature, have the force of subjecting the children against their will to an authority, to which they would not of themselves choose to submit. Hence the authority of the sovereign over the children of the members of the state, and the right, on the other hand, which these children have to the protection of the sovereign, and to the advantages of the government, are founded on mutual consent.

XI. Now if the children of members of the state, upon attaining to the years of discretion, are willing to live in the place of their parentage, or in their native country, they are by this very act supposed to submit themselves to the power, that governs the state, and consequently they ought to enjoy, as members of that state, the advantages naturally arising from it. This is the reason likewise, that, when once the sovereign is acknowledged, he has no occasion to tender the oath of allegiance to the children, who are afterward born in his dominions.

XII. Besides, it is a maxim, which has been ever considered, as a general law of government, that whosoever merely enters upon the territories of a state, and by a much stronger reason those, who are desirous of enjoying the advantages, which are to be found there, are supposed to renounce their natural liberty, and to submit to the established laws and government, so far as the public and private safety require. And, if they refuse to do this, they may be considered as enemies, in this sense at least, that the government has a right to expel them the country; and this is likewise a tacit covenant, by which they make a temporary submission to the government.

XIII. Subjects are sometimes called *cives*, or members of the civil state; some indeed make no distinction between these two terms, but I think it is better to distinguish them. The appellation of *civis* ought to be understood only of those, who share in all the advantages and privileges of the association, and who are properly members of the state either by birth, or in some other manner. All the rest are rather inmates, strangers, or temporary inhabitants, than members. As to women and servants, the title of member is applicable to them only inasmuch as they enjoy certain rights, in virtue of their dependance on their domestic governor, who is properly a member of the state; and all this depends on the laws and particular customs of each government.

XIV. To proceed; members, besides the general relation of being united in the same civil society, have likewise many other particular relations, which are reducible to two principal ones.

The first is, when private people compose particular bodies or corporations.

The second is, when sovereigns entrust particular persons with some share of the administration.

XV. Those particular bodies are called *Companies*, *Chambers*, *Colleges*, *Societies*, *Communities*. But it is to be observed, that all these particular societies are finally subordinate to the sovereign.

XVI. Besides, we may consider some as more ancient than the establishment of civil states, and others as formed since.

XVII. The latter are likewise either public, such as are established by the authority of the sovereign, and then they generally enjoy some particular privileges, agreeably to their parents; or private, such as are formed by private people.

XVIII. In fine, these private bodies are either lawful or unlawful. The former are those, which, having nothing in their nature contrary to good order, good manners, or the authority of the sovereign, are supposed to be approved of by the state, though they have not received any formal sanction. With respect to unlawful bodies, we mean not only those, whose members unite for the open commission of any crime, such as gangs of robbers, thieves, pirates, banditti, but likewise all other kinds of confederacies, which the subjects enter into without the consent of the sovereign, and contrary to the end of civil society. These engagements are called cabals, factions, conspiracies.

XIX. Those members, whom the sovereign entrusts with some share of administration, which they exercise in his name and by his authority, have in consequence thereof particular relations to the rest of the members, and are under stronger engagements to the sovereign; these are called ministers, public officers, or magistrates.

XX. Such are the regents of a kingdom, during a minority, the governors of provinces and towns, the commanders of armies, the directors of the treasury, the presidents of courts of justice, ambassadors, or envoys to foreign powers, &c. As all these persons are entrusted with a share of the administration, they represent the sovereign, and it is they, who have properly the name of public ministers.

XXI. Others there are, who assist merely in the execution of public business, such as counsellors, who only give their opinion, secretaries, receivers of the public revenue, soldiers, subaltern officers, &c.

CHAP. VI.

Of the immediate source, and foundation of sovereignty.

I. THOUGH what has been said in the fourth chapter concerning the structure of states is sufficient to show the original and source of sovereignty, as well as its real foundation; yet, as this is one of those questions, on which political writers are greatly divided, it will not be amiss to examine it somewhat more particularly; and what remains still to be said upon this subject will help to give us a more complete idea of the nature and end of sovereignty.

II. When we inquire here into the source of sovereignty, our intent is to know the nearest and immediate source of it; now it is certain, that the supreme authority, as well as the title, on which this power is established, and which constitutes its right, is derived immediately from the very covenants, which constitute civil society, and give birth to government.

III. And indeed, upon considering the primitive state of man, it appears most certain, that the appellations of sovereigns and subjects, masters and slaves, are unknown to nature. Nature has made us all of the same species, all equal, all free and independent of each other; in short she was willing that those on whom she has bestowed the same faculties, should have all the same rights. It is therefore beyond all doubt, that, in this primitive state of nature, no man has of himself an original right of commanding others, or any title to sovereignty.

IV. There is none but God alone, that has, in consequence of his nature and perfections, a natural, essential, and inherent right of giving laws to mankind, and of exercising an absolute sovereignty over them. The case is otherwise between man and man; they are in their own nature as independent of one another, as they are dependent on God. This liberty and in-

dependence is therefore a right naturally belonging to man, of which it would be unjust to deprive him against his will.

V. But if this be the case, and there is yet a supreme authority subsisting amongst mankind, whence can this authority arise, unless it be from the compacts or covenants, which men have made amongst themselves upon this subject? For, as we have a right of transferring our property to another by a covenant; so, by a voluntary submission, a person may convey to another, who accepts of the renunciation, the natural right he had of disposing of his liberty and natural strength.

VI. It must therefore be agreed, that sovereignty resides originally in the people, and in each individual with regard to himself; and that it is the transferring and uniting the several rights of individuals in the person of the sovereign, that constitutes him such, and really produces sovereignty. It is beyond all dispute for example, that, when the Romans chose Romulus and Numa for their kings, they must have conferred upon them, by this very act, the sovereignty, which those princes were not possessed of before, and to which they had certainly no other right, than what was derived from the election of the people.

VII. Nevertheless, though it be evident, that the immediate original of sovereignty is owing to human covenants, yet nothing can hinder us from affirming, with good ground, that it is of divine, as well as human right.

VIII. And indeed right reason having made it plainly appear, after the multiplication of mankind, that the establishment of civil societies and of a supreme authority was absolutely necessary for the order, tranquillity, and preservation of the species, it is as convincing a proof, that this institution is agreeable to the designs of Providence, as if God himself had declared it to mankind by a positive revelation. And, since God is essentially fond of order, he is doubtless willing, that there should be a supreme authority upon earth, which alone is capable of procuring and supporting that order amongst mankind, by enforcing the observance of the laws of nature.

IX. There is a beautiful passage of Cicero to this purpose.* *Nothing is more agreeable to the supreme Deity, that governs this universe, than civil societies lawfully established.*

X. When therefore we give to sovereigns the title of God's vicegerents upon earth, this does not imply, that they derive their authority immediately from God; but it signifies only, that by means of the power lodged in their hands, and with which the people have invested them, they maintain, agreeably to the views of the Deity, both order and peace, and thus procure the felicity of mankind.

XI. But if these magnificent titles add a considerable lustre to sovereignty, and render it more respectable, they afford likewise, at the same time, an excellent lesson to princes. For they cannot deserve the title of God's vicegerents upon earth, but inasmuch as they make use of their authority pursuant to the views and purposes, for which they were entrusted with it, and agreeably to the intention of the Deity, that is, for the happiness of the people, by using all their endeavors to inspire them with virtuous principles.

XII. This without doubt is sufficient to make us look upon the original of government, as sacred; and to induce subjects to show submission and respect to the person of the sovereign. But there are politcal writers, who carry the thing further, and maintain that it is God, who confers immediately the supreme power on princes, without any intervention or concurrence of men.

XIII. For this purpose, they make a distinction betwixt the cause of the state, and the cause of sovereignty. They confess indeed, that states are formed by covenants, but they insist, that God himself is the immediate cause of the sovereignty. According to their notions, the people, who choose to themselves a king, do not by this act confer the supreme authority upon him, they only point out the person, whom heaven is to entrust with it. Thus the consent of the people to the dominion of one or more persons, may be considered as a channel,

* *Nihil est illi principi Deo, qui omnem hunc mundum regit, quod quidem in terris fiat acceptius, quam consilia coetusque hominum jure sociati, quæ civitates appellantur* Som. Sip. *cap.* 3.

through which the supreme authority flows, but is not its real source.

XIV. The principal argument, which these writers adopt, is, that, as neither each individual amongst a number of free and independent people, nor the whole collective multitude, are in any wise possessed of the supreme authority, they cannot confer it on the prince. But this argument proves nothing. It is true, that neither each member of the society, nor the whole multitude collected, are formally invested with the supreme authority, such as we behold it in the sovereign, but it is sufficient, that they possess it virtually, that is, that they have within themselves all, that is necessary to enable them, by the concurrence of their free will and consent, to produce it in the sovereign.

XV. Since every indivdual has a natural right of disposing of his natural freedom according as he thinks proper, why should he not have a power of transferring to another that right, which he has of directing himself? Now is it not manifest, that, if all the members of this society agree to transfer this right to one of their fellow members, this cession will be the nearest and immediate cause of sovereignty? It is therefore evident, that there are, in each individual, the seeds as it were of the supreme power. The case is here very near the same, as in that of several voices, collected together, which by their union produces a harmony, that was not to be found separately in each.

XVI. But it will be here objected, that the scripture itself says, that every man ought to be subject to the supreme powers, because they are established by God.* I answer with Grotius, that men have established civil societies, not in consequence of a divine ordinance, but of their voluntary motion, induced by the experience they had of the incapacity, which separate families were under, of defending themselves against the insults and attacks of human violence. Thence (he adds) arises the civil power, which St. Peter, for this reason calls a *human* power,† though in other parts of scripture it bears the name of a divine

* Rom. xiii. † Ep. i. chap. ii. ver. 13.

institution,* because God has approved of it as an establishment useful to mankind.†

XVII. The other arguments in favor of the opinion we have been here refuting do not even deserve our notice. In general it may be observed, that never were more wretched reasons produced upon this subjuct, as the reader may be easily convinced by reading Puffendorf on the Law of Nature and Nations, who, in the chapter corresponding to this, gives these arguments at length, and fully refutes them.‡

XVIII. Let us therefore conclude, that the opinion of those, who pretend that God is the immediate cause of sovereignty, has no other foundation, than that of adulation and flattery, by which, in order to render the authority of sovereigns more absolute, they have attempted to render it independent of all human compact, and dependant only on God. But were we even to grant, that princes hold their authority immediately of God, yet the consequences, which some political writers want to infer, could not be drawn from this principle.

XIX. For since it is most certain, that God could never entrust princes with this supreme authority, but for the good of society in general, as well as of individuals, the exercise of this power must necessarily be limited by the very intention, which the Deity had in conferring it on the sovereign; insomuch that the people would still have the same right of refusing to obey a prince, who, instead of concurring with the views of the Deity, would on the contrary endeavour to cross and defeat them, by rendering his people miserable, as we shall prove more particularly hereafter.

* Rom. xiii. 1.

† Grotius on the Right of War and Peace, book i. chap. iv. § 7, 12. No. 3. See above, No. 7, and following.

‡ See the Law of Nature and Nations, book vii. chap. iii.

CHAP. VII.

Of the eesentil characters of sovereignty, its modifications, extent and limits.

1. *Of the characteristics of sovereignty.*

I. SOVEREIGNTY we have defined, a right of commanding in the last resort in civil society, which right the members of this society have conferred upon some person, with a view of maintaining order and security in the commonwealth. This definition shews us the principal characteristics of the power, that governs the state, and this is what it will be proper to explain here in a more particular manner.

II. The first characteristic, and that, from which all the others flow, is its being a supreme and independent power, that is, a power, that judges in the last resort of whatever is susceptible of human direction, and relates to the welfare and advantage of society; insomuch that this power acknowledges no other superior power on earth.

III. It must be observed however, that, when we say the civil power is of its own nature supreme and independent, we do not mean thereby, that it does not depend, in regard to its original, on the human will.* All, that we would have understood, is, that, when once this power is established, it acknowledges no other upon earth superior or equal to it, and consequently, that whatever it ordains in the plenitude of its power cannot be reversed by any other human will, as superior to it.

IV, That in every government there should be such a supreme power is a point absolutely necessary; the very nature of the thing requires it, otherwise it is impossible for it to subsist. For, since powers cannot be multiplied to infinity, we must necessarily stop at some degree of authority superior to all other. And let the form of government be what it will, monarchical, aristocratical, democratical, or mixt, we must always submit to a supreme decision; since it implies a contradiction to say, that

* See above, chap. iv. &c. where we have proved the contrary.

there is any person above him, who holds the highest rank in the same order of beings.

V. A second characteristic, which is a consequence of the former, is that the sovereign, as such, is not accountable to any person upon earth for his conduct, nor liable to any punishment from man; for both suppose a superior.

VI. There are two ways of being accountable.

One as to a superior, who has a right of reversing what has been done, if he does not find it to his liking, and even of inflicting some punishment, and this is inconsistent with the idea of a sovereign.

The other as to an equal, whose approbation we are desirous of having; and in this sense a sovereign may be accountable, without any absurdity. And even they, who have a right idea of honour, endeavour by such means to acquire the approbation and esteem of mankind, by letting all the world see, that they act with prudence and integrity. But this does not imply any dependance.

VII. I said that the sovereign, as such, was neither accountable nor punishable; that is, so long as he continues really a sovereign, and has not forfeited his right. For it is past all doubt, that if the sovereign, utterly forgetful of the end, for which he was entrusted with the sovereignty, applied it to a quite contrary purpose, and thus became an enemy to the state; the sovereignty returns *(ipso facto)* to the nation, who, in that case, can act towards the person, who was their sovereign, in the manner they think most agreeable to their security and interests. For, whatever notion we may entertain of sovereignty, no man in his senses will pretend to say, that it is an undoubted title to follow the impulse of our irregular passions with impunity, and thus to become an enemy to society.

VIII. A third characteristic essential to sovereignty considered in itself, is that the sovereign, as such, be above all human or civil law. I say, all human law; for there is no doubt but the sovereign is subject to the divine laws, whether natural or positive.

Regum timendorum in proprios greges,
Reges in ipsos imperium est Jovis.
HOR. lib. 3. Od. 1.

IX. But with regrard to laws merely human, as their whole force and obligation ultimately depends on the will of the sovereign, they cannot, with any propriety of speech, be said to be obligatory in respect to him; for obligation necessarily supposeth two persons, a superior and an inferior.

X. And yet natural equity requires sometimes, that the prince should conform to his own laws, to the end, that his subjects may be more effectually induced to observe them. This is extremely well expressed in these verses of Claudian.*

In commune jubes, si quid, censesve tenendum,
Primus jussa subi; tunc observantior æqui
Fit populus, nec ferre negat, cum viderit ipsum
Auctorem parere sibi; componitur orbis
Regis ad exemplum nec sic inflectere sensus
Humanos edicta valent, ut vita regentis.

Would you your public laws should sacred stand,
Lead first the way, and act what you command.
The crowd grow mild and tractable to see
The author governed by his own decree.
The world turns round, as its great matter draws,
And princes lives bind stronger than their laws.

XI. To proceed, in treating here of sovereignty, we suppose that it is really and absolutely such in its own nature, and that the establishment of civil laws ultimately depends on the sole will of the person, who enjoys the honours and title of sovereign, insomuch, that his authority, in this respect, cannot be limited; otherwise this superiority of the prince above the laws is not applicable to him in the full extent, in which we have given it him.

XII. This sovereignty, such as we have now represented it,

* De IV. Consul Honor. ver. 296, et seq.

resided originally in the people. But when once the people have transferred their right to a sovereign, they cannot, without contradiction, be supposed to continue still masters of it.

XIII. Hence the distinction, which some political writers make, between *real sovereignty*, which always resides in the people, and *actual sovereignty*, which belongs to the king, is equally absurd and dangerous. For it is ridiculous to pretend, that after the people have conferred the supreme authority on the king, they should still continue in possession of that very authority superior to the king himself.

XIV. We must therefore observe here a just medium, and establish principles, that neither favor tyranny, nor the spirit of mutiny and rebellion.

1. It is certain that, so soon as the people submit to a king, really such, they have no longer the supreme power.

2. But it does not follow, from the people's having conferred the supreme power in such a manner, that they have reserved to themselves in no case the right of resuming it.

3. This reservation is sometimes explicit; but there is always a tacit one, the effect of which discloses itself, when the person, intrusted with the supreme authority, perverts it to an use directly contrary to the end, for which it was conferred upon him, as will better appear hereafter.

XV. But though it be absolutely necessary, that there should be a supreme and independent authority in the state, there is nevertheless some difference, especially in monarchies and aristocracies, with regard to the manner, in which those, who are intrusted with this power, exercise it. In some states the prince governs as he thinks proper; in others he is obliged to follow some fixt and constant rules, from which he is not allowed to deviate; this is what I call the modifications of sovereignty, and hence arises the distinction of absolute and limited sovereignty.

2. *Of absolute sovereignty.*

XVI. Absolute sovereignty is therefore nothing else, but the right of governing the state as the prince thinks proper, according as the present situation of affairs seems to require, and with-

out being obliged to consult any person whatever, or to follow any fixt and perpetual rules.

XVII. Upon this head we have several important reflections to make.

1. The word *absolute power* is generally very odious to republicans; and I must confess, that when it is misunderstood, it is apt to make the most dangerous impression on the minds of princes, especially in the mouths of flatterers.

2. In order to form a just idea of it, we must trace it to its principle. In the state of nature every man has an absolute right to act after what manner he thinks most conducive to his happiness, and without being obliged to consult any person whatever, provided however he does nothing contrary to the laws of nature. Consequently when a multitude of men unite together, in order to form a state, this body hath the same liberty in regard to matters, in which the public good is concerned.

3. When therefore the whole body of the people confer the sovereignty upon a prince, with this extent and absolute power, which originally resided in themselves, and without adding any particular limitation to it, we call that sovereignty absolute.

4. Things being thus constituted, we must not confound an absolute power with an arbitrary, despotic, and unlimited authority. For, from what we have here advanced concerning the original and nature of absolute sovereignty, it manifestly follows, that it is limited, from its very nature, by the intention of those, who conferred it on the sovereign, and by the very laws of God. This is what we must explain more at large.

XVIII. The end, which mankind proposed to themselves in renouncing their natural independence, and establishing government and sovereignty, was doubtless to redress the evils, which they labored under, and to secure their happiness. If so, how is it possible to conceive, that those, who with this view granted an absolute power to the sovereign, should have intended to give him an arbitrary and unlimited authority, so as to intitle him to gratify his caprice and passions to the prejudice of the life, property, and liberty of the subject? On the contrary we have shown above, that the civil state must necessarily empower the subjects to insist upon the sovereign's using his authority for their advantage, and according to the purposes, for which he was intrusted with it.

XIX. It must therefore be acknowledged, that it never was the intention of the people to confer absolute sovereignty upon a prince, but with this express condition, that the public good should be the supreme law to direct him; consequently so long, as the prince acts with this view, he is authorised by the people; but, on the contrary, if he makes use of his power merely to ruin and destroy his subjects, he acts intirely of his own head, and not in virtue of the power, with which he was intrusted by the people.

XX. Still further, the very nature of the thing does not allow absolute power to be extended beyond the bounds of public utility; for absolute sovereignty cannot confer a right upon the sovereign, which the people had not originally in themselves. Now before the establishment of civil society, surely no man had a power of injuring either himself or others; consequently absolute power cannot give the sovereign a right to hurt and abuse his subjects.

XXI. In the state of nature every man was absolute master of his own person and actions, provided he confined himself within the limits of the law of nature. Absolute power is formed only by the union of all the rights of individuals in the person of the sovereign; of course the absolute power of the sovereign is confined within the same bounds, as those, by which the absolute power of individuals was originally limited.

XXII. But I go still further and affirm, that, supposing even a nation had been really willing to grant their sovereign an arbitrary and unlimited power, this concession would of itself be void and of no effect.

XXIII. No man can divest himself so far of his libetty, as to submit to an arbitrary prince, who is to treat him absolutely according to his fancy. This would be renouncing his own life, which he is not master of; it would be renouncing his duty, which is never permitted; and if thus it be with regard to an individual, who should make himself a slave, much less hath an entire nation that power, which is not to be found in any of its members.

XXIV. By this it appears most evident, that all sovereignty, how absolute soever we suppose it, hath its limits; and that it can never imply an arbitrary power in the prince of doing whatever he pleases, without any other rule or reason than his own despotic will.

XXV. For how indeed should we attribute any such power to the creature, when it is not to be found in the supreme Being himself? His absolute dominion is not founded on a blind will; his sovereign will is always determined by the immutable rules of wisdom, justice, and beneficence.

XXVI. In short the right of commanding, or sovereignty, ought always to be established ultimately on a power of doing good, otherwise it cannot be productive of a real obligation; for reason cannot approve or submit to it; and this is what distinguishes empire and sovereignty from violence and tyranny. Such are the ideas we ought to form of absolute sovereignty.

3. *Of limited sovereignty.*

XXVII. But although absolute power, considered in itself, and such as we have now represented it, implies nothing odious or unlawful, and in that sense people may confer it upon the sovereign; yet we must allow, that the experience of all ages has informed mankind, that this is not the form of government, which suits them best, nor the fittest for procuring them a state of tranquillity and happiness.

XXVIII. Whatever distance there may be between the subjects and the sovereign, in whatsoever degree of elevation the latter may be placed above the rest, still he is a human creature like themselves; their souls are all cast as it were in the same mould, they are all subject to the same prejudices, and susceptible of the same passions.

XXIX. Again, the very station, which sovereigns occupy, exposes them to temptations, unknown to private people. The generality of princes have neither virtue nor courage sufficient to moderate their passions, when they find they may do whatever they list. The people have therefore great reason to fear, that an unlimited authority will turn out to their prejudice, and

that if they do not reserve some security to themselves, against the sovereign's abusing it, he will some time or other abuse it.

XXX. It is these reflections, justified by experience, that have induced most, and those the wisest nations to set bounds to the power of their sovereigns, and to prescribe the manner in which the latter are to govern; and this has produced what is called limited sovereignty.

XXXI. But, though this limitation of the supreme power be advantageous to the people, it does no injury to the princes themselves; nay it may rather be said, it turns out to their advantage, and forms the greatest security to their authority.

XXXII. It does no injury to princes; for, if they could not be satisfied with a limited authority, their business was to refuse the crown; and when once they have accepted of it upon these conditions they are no longer at liberty to endeavor afterwards to break through them, or to strive to render themselves absolute.

XXXIII. It is rather advantageous to princes, because those, who are invested with absolute power, and are desirous of discharging their duty, are obliged to a far greater vigilance and circumspection, and exposed to more fatigue, than those, who have their task as it were marked out to them, and are not allowed to deviate from certain rules.

XXXIV. In fine this limitation of sovereignty forms the greatest security to the authority of princes; for, as they are less exposed hereby to temptation, they avoid that popular fury, which is sometimes discharged on those, who, having been invested with absolute authority, abuse it to the public prejudice. Absolute power easily degenerates into despotism, and despotism paves the way for the greatest and most fatal resolutions, that can happen to sovereigns. This is what the experience of all ages has verified. It is therefore a happy incapacity in kings not to be able to act contrary to the laws of their country.

XXXV. Let us therefore conclude, that it entirely depends upon a free people, to invest the sovereigns, whom they place over their heads, with an authority either absolute, or limited by certain laws, provided these laws contain nothing contrary to justice, nor to the end of government. These regulations, by

which the supreme authority is kept within bounds, are called *the fundamental laws of the state.*

4. *Of fundamental laws.*

XXXVI. The fundamental laws of a state, taken in their full extent, are not only the decrees, by which the entire body of the nation determine the form of government, and the manner of succeeding to the crown; but are likewise the covenants betwixt the people and the person, on whom they confer the sovereignty, which regulate the manner of governing, and by which the supreme authority is limited.

XXXVII. These regulations are called fundamental laws, because they are the basis as it were, and foundation of the state, on which the structure of the government is raised, and because the people look upon those regulations, as their principal strength and support.

XXXVIII. The name of laws however has been given to these regulations in an improper and figurative sense; for, properly speaking, they are real covenants. But, as those covenants are obligatory between the contracting parties, they have the force of laws themselves. Let us explain this more at large.

XXXIX. 1. I observe in the first place, that there is a kind of fundamental law essential to all governments, even in those states, where the most absolute sovereignty prevails. This law is that of the public good, from which the sovereign can never depart, without being wanting in his duty; but this alone is not sufficient to limit the sovereignty.

XL. Hence those promises either tacit or express, by which princes bind themselves even by oath, when they come to the crown, of governing according to the laws of justice and equity, of consulting the public good, of oppressing no man, of protecting the virtuous, and of punishing evil doers, and the like, do not imply any limitation to their authority, nor any diminution of their absolute power. It is sufficient, that the choice of the means for procuring the advantage of the state, and the method of putting them in practice, be left to the judgment and disposal of the sovereign; otherwise the distinction of absolute and limited power would be utterly abolished.

XLI. 2. But with regard to fundamental laws, properly so called, they are only more particular precautions, taken by the people, to oblige sovereigns more strongly to employ their authority, agreeably to the general rule of the public good. This may be done several ways; but still these limitations of the sovereignty have more or less force, according as the nation has taken more or less precautions, that they shall have their due effect.

XLII. Hence, 1. a nation may require of a sovereign, that he will engage, by a particular promise, not to make any new laws, nor to levy new imposts, to tax only some particular things, to give places and employments only to a certain set of people, and not to take any foreign troops into his pay, &c. Then indeed the supreme authority is limited in those different respects, insomuch that whatever the king attempts afterwards, contrary to the formal engagement he entered into, shall be void and of no effect. But if there should happen to be an extraordinary case, in which the sovereign thought it conducive to the public good to deviate from the fundamental laws, he is not allowed to do it of his own head, in contempt of his solemn engagement; but in that case he ought to consult the people themselves or their representatives. Otherwise, under pretence of some necessity or utility, the sovereign might easily break his word, and frustrate the effect of the precautions, taken by the nation to limit his power. And yet Pufendorf thinks otherwise.* But, for a still greater security of the performance of the engagements, into which the sovereign entered, and which limit his power, it is proper to require explicitly of him, that he shall convene a general assembly of the people, or of their representatives, or of the nobility of the country, when any matters happen to fall under debate, which it was thought improper to leave to his decision. Or else the nation may previously establish a council, a senate, or a parliament, without whose consent the prince shall be rendered incapable of acting in regard to things, which the nation did not think fit to submit to his will.

XLIII. 2. History informs us, that some nations have carri-

* See the Law of Nature and Nations, book vii. chap. vi. sect. 10.

ed their precautions still further, by inserting in plain terms, in their fundamental laws, a condition or clause, by which the king was declared to have forfeited his crown, if he broke through those laws. Puffendorf gives an example of this, taken from the oath of allegiance, which the people of Aragon formerly made to their kings. *We, who have as much power as you, make you our king, upon condition, that you maintain inviolably our rights and liberties, and not otherwise.*

XLIV. It is by such precautions as these, that a nation really limits the authority, she confers on the sovereign, and secures her liberty. For, as we have already observed, civil liberty ought to be accompanied not only with a right of insisting on the sovereign's making a due use of his authority, but moreover with a moral certainty, that this right shall have its effect. And the only way to render the people thus certain is to use proper precautions against the abuse of the sovereign power, and in such a manner, that these precautions cannot be easily eluded.

XLV. Besides, we must observe, that these limitations of the sovereign power do not render it defective, nor make any diminution in the supreme authority; for a prince, or a senate, who has been invested with the supreme power upon this footing, may exercise every act of it as well, as in an absolute monarchy. All the difference is, that in the latter the prince alone determines ultimately according to his private judgment; but, in a limited monarchy, there is a certain assembly, who, in conjunction with the king, take cognizance of particular affairs, and whose consent is a necessary condition, without which the king can determine nothing. But the wisdom and virtue of good sovereigns are strengthened by the concurring assistance of those, who have a share in the authority. Princes always do what they incline to, when they incline to nothing but what is just and good; and they ought to esteem themselves happy in having it put out of their power to act otherwise.

XLVI. 3. In a word, as the fundamental laws, which limit the sovereign authority, are nothing else but the means, which the people use to assure themselves, that the prince will not recede from the general law of the public good in the most important conjunctures, it cannot be said, that they render the sovereignty imperfect or defective. For, if we suppose a prince invested with absolute authority, but at the same time blessed with so much wisdom and virtue, that he will never, even in the most trifling case, deviate from the laws, which the public good requires, and that all his determinations shall be subjected to this superior rule, can we, for that reason, say, that his power is in the least weakened or diminished? No certainly; for the precautions, which the people take against the weakness or the wickedness inseparable from human nature in limiting the power of their sovereigns, to hinder them from abusing it, do not in the least weaken or diminish the sovereignty; but, on the contrary, they render it more perfect, by reducing the sovereign to a necessity of doing good, and consequently by putting him as it were out of a capacity of misbehaving.

XLVII. Neither are we to believe, that there are two distinct wills in a state, whose sovereignty is limited in the manner we have explained; for the state wills or determines nothing but by the will of the king. Only it is to be observed, that, when a condition stipulated happens to be broken, the king cannot decree at all, or at least he must do so in vain in certain points; but he is not, for this reason, less a sovereign, than he was before. Because a prince cannot do every thing according to his humour, it does not follow that he is not the sovereign. Sovereign and absolute power ought not to be confounded; and, from what has been said, it is evident, that the one may subsist without the other.

XLVIII. 4. Lastly, there is still another manner of limiting the authority of those, to whom the sovereignty is committed; which is, not to trust all the different rights, included in the sovereignty, to one single person; but to lodge them in separate hands, or in different bodies; that they may modify or restrain the sovereignty.

XLIX. For example, if we suppose, that the body of the nation reserves to itself the legislative power, and that of creating the principal magistrates; that it gives the king the military and executive powers, &c. and that it trusts to a senate, composed of the principal men, the judiciary power, that of laying taxes, &c. it is easily conceived, that this may be execut-

ed in different manners, in the choice of which prudence must determine us.

L. If the government is established on this footing, then, by the original compact of association, there is a kind of partition in the rights of the sovereignty, by a reciprocal contract or stipulation between the different bodies of the state. This partition produces a balance of power, which places the different bodies of the state in such a mutual dependance, as retains every one, who has a share in the sovereign authority, within the bounds, which the law prescribes to them; by which means the public liberty is secured. For example, the regal authority is balanced by the power of the people, and a third order serves as a counterbalance to the two former to keep them always in an equilibrium, and hinder the one from subverting the other. And this is sufficient, concerning the distinction between absolute and limited sovereignty.

5. *Of patrimonial and usufructuary kingdoms.*

LI. In order to finish this chapter, let us observe, that there is still another accidental difference in the manner of possessing the sovereignty, especially with respect to kings. Some are masters of their crown in the way of patrimony, which they are permitted to share, transfer, or alienate to whom they have a mind; in a word, of which they can dispose, as they think proper; others hold the sovereignty in the way of *use* only, not of property; and this either for themselves only, or with the power of transmitting it to their descendants according to the laws, established for the succession. It is upon this foundation, that the learned distinguish kingdoms into patrimonial, and usufructuary or not patrimonial.

LII. We shall here add, that those kings possess the crown in full property, who have acquired the sovereignty by right of conquest; or those, to whom a people have delivered themselves up without reserve, in order to avoid a greater evil; but that, on the contrary, those kings, who have been established by a free consent of the people, possess the crown in the way of *use* only. This is the manner, in which Grotius explains

this distinction, in which he has been followed by Puffendorf, and by most of the other commentators or writers.*

LIII. On this we may make the following remarks.

1. There is no reason to hinder the sovereign power, as well as every other right, from being alienated or transferred. In this there is nothing contrary to the nature of the thing; and, if the agreement between the prince and the people bears, that the prince shall have full right to dispose of the crown, as he shall think proper, this will be what we call a patrimonial kingdom.

2. But examples of such agreements are very rare; and we hardly find any other except that of the Egyptians with their king, mentioned in Genesis.†

3. The sovereign power, however absolute, is not of itself invested with the right of property, nor consequently with the power of alienation. These two ideas are intirely distinct, and have no necessary connexion with each other.

4. It is true, some alledge a great many examples of alienations, made in all ages by sovereigns; but either those alienations had no effect; or they were made with an express or tacit consent of the people; or lastly they were founded on no other title, than that of force.

5. Let us therefore take it for an incontestible principle, that, in dubious cases, every kingdom ought to be judged not patrimonial, so long as it cannot be proved, that a people submitted themselves on that footing to a sovereign.

CHAP. VIII.

Of the parts of sovereignty, or of the different essential rights, which it includes.

I. IN order to finish this first part nothing remains, but to treat of the different parts of sovereignty. We may consider sovereignty as an assemblage of various rights and different powers, which, though distinct, are nevertheless conferred for the same end; that is to say, for the good of the society, and

* See Grotius on the right of war and peace, lib. i. chap. iii. sect. 11 and 12 &c. Puffendorf on the law of nature and nations, lib. vii. chap. vi. sect. 14, 15.

† Chap. xlvii. ver. 18, &c.

which are all essentially necessary for this same end. These different rights and powers are called the essential parts of sovereignty.

II. To be convinced, that these are the parts of sovereignty, we need only attend to its nature and end.

The end of sovereignty is the preservation, the tranquillity, and the happiness of the state, as well within itself, as with respect to its interests abroad; so that sovereignty must include every thing, that is essentially necessary for procuring this twofold end.

III. 1. As this is the case, the first part of sovereignty, and that, which is, as it were, the foundation of all the rest, is the legislative power, by virtue of which the sovereign establishes general and perpetual rules, which are called *laws*. By these means every one knows how he ought to conduct himself for the preservation of peace and good order, what share he retains of his natural liberty, and how he ought to exert his rights, so as not to disturb the public tranquillity.

It is by means of laws, that we contrive so nobly to unite the prodigious diversity of sentiments and inclinations, observable among men, and establish that concert and harmony so essential to society, since they direct the different actions of individuals to the general good and advantage. But it must be supposed, that the laws of the sovereign contain nothing opposite to the divine laws, whether natural or revealed.

IV. 2. To the legislative we must join the coercive power, that is to say, the right of ordaining punishments against those, who molest the community by their irregularities, and the power of actually inflicting them. Without this power the establishment of civil society and of laws would be absolutely useless, and we could not propose to live in peace and safety. But, that the dread of punishments may make a sufficient impression on the minds of the people, the right of punishing must extend to the power of inflicting the greatest of natural evils, which is death; otherwise the dread of punishment would not be always capable of counterbalancing the force of pleasure, and the impulse of passion. In a word the subjects must have a stronger interest to observe, than to violate the law. Thus the vindictive power is certainly the highest degree of authority, which one man can hold over another.

V. 3. Further it is necessary for the preservation of peace, that the sovereign should have a right to take cognizance of the different quarrels between the subjects, and to decide them in the last resort; as also to examine the accusations, laid against any person, in order to absolve or punish him by his sentence, conformably to the laws; this is what we call *jurisdiction*, or the *judiciary power*. To this we must also refer the right of pardoning criminals, when the public utility requires it.

VI. 4. Besides, as the ways of thinking, or opinions, embraced by the subject, may have a very great influence on the welfare of the commonwealth, it is necessary that sovereignty should include a right of examining the doctrines, taught in the state; so that nothing may be publicly advanced, but what is conformable to truth, and conducive to the advantage of society. Hence it is, that it belongs to the sovereign to establish professors, academies, and public schools; and the supreme power, in matters of religion, is as much his right, as the nature of the thing will permit. After having secured the public repose at home, it is necessary to guard the people against strangers, and to procure to them, by leagues with foreign states, all the necessary aids and advantages, whether in the seasons of peace or war.

VII. 5. In consequence of this, the sovereign ought to be invested with the power of assembling and arming his subjects, or of raising other troops in as great a number, as is necessary for the safety and defence of a state, and of making peace, when he shall judge proper.

VIII. 6. Hence also arises the right of contracting public engagements, of making treaties and alliances with foreign sates, and of obliging all the subjects to observe them.

IX. 7. But as the public affairs, both at home and abroad, cannot be conducted by a single person, and as the sovereign is incapable of discharging all these duties, he must certainly have a power to create ministers and subordinate magistrates, whose business it is to take care of the public welfare, and transact the affairs of the state in his name, and under his authority. The

sovereign, who has entrusted them with those employments, may, and ought to compel them to discharge them, and oblige them to give an exact account of their administration.

X. 8. Lastly the affairs of the state necessarily demand, both in times of peace and war, considerable expenses, which the sovereign himself neither can nor ought to furnish. He must therefore have a right of reserving to himself a part of the goods or products of the country, or of obliging the subjects to contribute either by their purse, or by their labor and personal service, as much, as the public necessities demand, and this is called the *right of subsidies or taxes.*

To this part of the sovereignty we may refer the prerogative of coining money, the right of hunting, with that of fishing, &c. These are the principal parts essential to sovereignty.

END OF THE FIRST PART.

THE

PRINCIPLES

OF

POLITIC LAW.

PART II.

In which are explained the different forms of government, the ways of acquiring or losing sovereignty, and the reciprocal duties of sovereigns and subjects.

CHAP. I.

Of the various forms of government.

I. NATIONS have been sensible, that it was essential to their happiness and safety to establish some form of government. They have all agreed in this point, that it was necessary to institute a supreme power, to whose will every thing should be ultimately submitted.

II. But the more the establishment of a supreme power is necessary, the more important is the choice of the person, invested with that high dignity. Hence it is that, in regard to this article, nations are extremely divided, having entrusted the supreme power in different hands, according as they judged it most conducive to their safety and happiness; neither have they taken this step without making several systems and restrictions, which may vary greatly. This is the origin of the different forms of government.

III. There are therefore various forms of government, according to the different subjects, in whom the sovereignty immediately resides, and according as it is inherent either in a sin-

gle person, or in a single assembly, more or less compounded, and this is what forms the constitution of the state.

IV. These different forms of government may be reduced to two general classes, namely to the simple forms, or to those, which are compounded or mixed.

V. There are three simple forms of government; Democracy, Aristocracy, and Monarchy.

VI. Some nations, more diffident than others, have placed the sovereign power in the multitude itself, that is to say, in the heads of families, assembled and met in council; and such governments are called Popular or Democratic.

VII. Other nations of a bolder turn, passing to the opposite extreme, have established Monarchy, or the government of a single man. Thus Monarchy is a state, in which the supreme power, and all the rights essential to it, reside in a single person, who is called *King, Monarch, or Emperor.*

VIII. Others have kept a due medium between those two extremes, and lodged the whole sovereign authority in a council, composed of select members, and this is termed an Aristocracy, or the government of the Nobles.

IX. Lastly other nations have been persuaded, that it was necessary, by a mixture of the simple forms, to establish a compound government, and, making a division of the sovereignty, to intrust the different parts of it to different hands; to temper, for example, Monarchy with Aristocracy; and at the same time to give the people a share in the sovereignty; this may be executed different ways.

X. In order to have a more particular knowledge of the nature of these different forms of government, we must observe, that, as in Democracies the sovereign is a moral person, formed by the union of all the heads of families into a single will, there are three things absolutely necessary for the constitution of this form of government.

1. That there be a certain place, and regulated times for deliberating in common on the public affairs; the members of the sovereign council might assemble at different times, or places, whence factions would arise, which would interrupt the union essential to the state.

2. It must be established for a rule, that the plurality of suffrages shall pass for the will of the whole; otherwise no affair could be determined, it being impossible that a great number of people should be always of the same opinion. We must therefore esteem it the essential quality of a moral body, that the resolution of the majority shall pass for the will of the whole.

3. Lastly it is essential, that magistrates should be appointed to convene the people in extraordinary cases, to dispatch ordinary affairs in their name, and to see that the decrees of the assembly be executed; for, since the sovereign council cannot always sit, it is evident that it cannot take the direction of every thing itself.

XI. With regard to Aristocracies, since the sovereignty resides in a council or senate, composed of the principal men of the nation, it is absolutely necessary that the conditions essential to the constition of a Democracy, and which we have above mentioned, should also concur to establish an Aristocracy.

XII. Further, Aristocracy may be of two kinds, either by birth and hereditary, or elective. The aristocracy by birth, and hereditary, is that, which is confined to a certain number of families, to which birth alone gives right, and which passes from parents to their children, without any choice, and to the exclusion of all others. On the contrary, the elective Aristocracy is that, in which a person arrives at the government by election only, and without receiving any right from birth.

XIII. In a word, it may be equally observed of Aristocracies and Democracies, that, whether in a popular state, or in a government of the nobles, every citizen, or every member of the supreme council, has not the supreme power, nor even a part of it; but this power resides either in the general assembly of the people, convened according to the laws, or in the council of the nobles; for it is one thing to have a share in the sovereignty, and another to have the right of suffrage in an assembly invested with the sovereign power.

XIV. As to Monarchy, it is established, when the whole body of the people confer the sovereign power on a single per-

son, which is done by an agreement betwixt the king and his subjects, as we have before explained.

XV. There is therefore this essential difference between Monarchy and the two other forms of government, that, in Democracies and Aristocracies, the actual exercise of the sovereign authority depends on the concurrence of certain circumstances of time and place; whareas in a Monarchy, at least when it is simple and absolute, the prince can give his orders at all times, and in all places. *It is Rome wherever the Emperor resides.*

XVI. Another remark, which very naturally occurs on this occasion, is, that in a Monarchy, when the king orders any thing contrary to justice and equity, he is certainly to blame, because in him the civil and natural wills are the same thing. But when the assembly of the people, or a senate, form an unjust resolution, only those citizens or senators, who carried the point, render themselves really accountable, and not those, who were of the opposite sentiment. Let this suffice for the simple forms of government.

XVII. As to mixed or compound governments, they are established, as we have observed, by the concurrence of the three simple forms, or only of two; when for example the king, the nobles, and the people, or only the two latter, share the different parts of the sovereignty between them, so that one administers some parts of it, and the others the remainder. This mixture may be made various ways, as we observe in most republics.

XVIII. It is true, to consider sovereignty in itself, and in the height of plenitude and perfection, all the rights, which it includes, ought to belong to a single person, or to one body, without any partition; so that there be but one supreme will to govern the subject. There cannot properly speaking be several sovereigns in a state, who shall act as they please, independently of each other. This is morally impossible, and besides would manifestly tend to the ruin and destruction of society.

XIX. But this union of the supreme power does not hinder the whole body of the nation, in which this power originally resides, from regulating the government by a fundamental law, in such a manner, as to commit the exercise of the different parts

of the supreme power to different persons or bodies, who may act independently of each other, in regard to the rights committed to them, but still subordinate to the laws, from which those rights are derived.

XX. And provided the fundamental laws, which establish this species of partition in the sovereignty, regulate the respective limits of the different branches of the legislature, so that we may easily see the extent of their jurisdiction; this partition produces neither a plurality of sovereigns, nor an opposition between them, nor any irregularity in the government.

XXI. In a word, in this case there is, properly speaking, but one sovereign, who in himself is possessed of the fulness of power. There is but one supreme will. This sovereign is the body of the people, formed by the union of all the orders of the state; and this supreme will is the very law, by which the whole body of the nation makes its resolutions known.

XXII. They, who thus share the sovereignty among them, are properly no more, than the executors of the law; since it is from the law itself, that they hold their power. And as these fundamental laws are real covenants, or what the civilians call *pacta conventa*, between the different orders of the republic,* by which they mutually stipulate, that each shall have such a particular part of the sovereignty, and that this shall establish the form of government, it is evident that, by these means, each of the contracting parties acquires a right not only of exercising the power, granted to it, but also of preserving that original right.

XXIII. Such party cannot even be divested of its right in spite of itself, and by the will of the rest, so long at least as it conducts itself in a manner conformable to the laws, and not manifestly opposite to the public welfare.

XXIV. In a word, the constitution of those governments can be changed only in the same manner, and by the same methods, by which it was established, that is to say, by the unanimous concurrence of all the contracting parties, who have fixed the form of government by the original contract.

XXV. This constitution of the state by no means destroys the union of a moral body, composed of several persons, or of

* See part i. chap. vii. No. 35, &c.

several bodies, really distinct in themselves, but joined by a fundamental law in a mutual engagement.

XXVI. From what has been said on the nature of mixed or compound governments it follows, that, in all such states, the sovereignty is limited; for as the different branches are not committed to a single person, but lodged in different hands, the power of those, who have a share in the government, is thereby restrained; and as they are thus a check to each other, this produces such a balance of authority, as secures the public weal, and the liberty of individuals.

XXVII. But with respect to simple governments; in these the sovereignty may be either absolute or limited. Those, who are possessed of the sovereignty, exercise it sometimes in an absolute, and sometimes in a limited manner, by fundamental laws, which prescribe bounds to the sovereign, with regard to the manner, in which he ought to govern.

XXVIII. On this occasion it is expedient to observe, that all the accidental circumstances, which can modify simple Monarchies or Aristocracies, and which in some measure may be said to limit sovereignty, do not, for that reason, change the form of government, which still continues the same. One government may partake somewhat of another, when the manner, in which the sovereign governs, seems to be borrowed from the form of the latter; but it does not, for that reason, change its nature.

XXIX. For example, in a Democratic state the people may intrust the care of several affairs either to a principal member, or to a senate. In an Aristocracy there may be a chief magistrate, invested with a particular authority, or an assembly of the people to be consulted on some occasions. Or lastly, in a Monarchic state, important affairs may be laid before a senate, &c. But these accidental circumstances do by no means change the form of the government; neither is there a partition of the sovereignty on this account; the state still continues purely either Democratic, Aristocratic, or Monarchic.

XXX. In a word there is a wide difference between exercising a proper power, and acting by a foreign and precarious authority, which may every minute be taken away by him, who

conferred it. Thus what constitutes the characteristic of mixed or compound commonwealths, and distinguishes them from simple governments, is, that the different orders of the state, who have a share in the sovereignty, possess the rights, which they exercise, by an equal title, that is to say, in virtue of the fundamental law, and not under the title of commission, as if the one was only the minister or executor of the other's will. We must therefore be sure to distinguish between the form of government, and the manner of governing.

XXXI. These are the principal observations with respect to the various forms of government. Puffendorf explains himself in a somewhat different manner, and calls those governments irregular, which we have styled mixed; and he gives the name of regular to the simple governments.*

XXXII. But this regularity is only in idea; the true rule of practice ought to be that, which is most conformable to the end of civil society, supposing men to be in their usual state, and taking the general course of things into the account, according to the experience of all countries and ages. Now on this footing, the states, in which the whole depends on a single will, are so far from being happy, that it is certain their subjects have the most frequent reason to lament the loss of their natural independence.

XXXIII. Besides, it is with the body politic, as with the human body; there is a difference between a sound and cachectic state.

XXXIV. These disorders arise either from the abuse of the sovereign power, or from the bad constitution of the state; and the causes thereof are to be sought for either in the defects of the governors, or in those of the government itself.

XXXV. In Monarchies, the defects of the person are, when the king has not the qualifications necessary for reigning, when he has little or no attachment to the public good, and when he delivers his subjects up as a prey, either to the avarice or ambition of his ministers, &c.

XXXVI. With regard to Aristocracies, the defects of the

* See Law of nature and nations, book vii. chap. v.

persons are, when, by intrigue and other sinister methods, they introduce into the council either wicked men, or such, as are incapable of business, while persons of merit are excluded; when factions and cabals are formed; and when the nobles treat the populace as slaves, &c.

XXXVII. In fine, we sometimes see also in Democracies, that their assemblies are disturbed with intestine broils, and merit is oppressed by envy, &c.

XXXVIII. In regard to the defects of government, they are of various kinds. For example, if the laws of the state be not conformable to the natural genius of the people, tending to engage in a war a nation, that is not naturally warlike, but inclined to the peaceful arts; or if they be not agreeable to the situation and the natural products of the country; thus it is bad conduct not to promote commerce and manufactures in a province, well situated for that purpose, and abounding with the materials of trade. It is also a defect of government, if the constitution of the state renders the dispatch of affairs very slow or difficult, as in Poland, where the opposition of a single member dissolves the diet.

XXXIX. It is customary to give particular names to these defects in government. Thus the corruption of Monarchy is called Tyranny. Oligarchy is the abuse of Aristocracy; and the abuse of Democracy is called Ochlocracy. But it often happens, that these words denote less a defect or disorder in the state, than some particular passion or disgust in those, who use them.

XL. To conclude this chapter, we have only to take some notice of those compound forms of government, which are formed by the union of several particular states. These may be defined an assemblage of perfect governments strictly united by some particular bond, so that they seem to make but a single body with respect to the affairs, which interest them in common, though each preserves its sovereignty full and entire, independently of the others.

XLI. This assemblage is formed either by the union of two or more distinct states under one and the same king; as for instance, England, Scotland, and Ireland, before the union lately made between England and Scotland; or when several independent states agree among themselves to form but a single body; such are the united provinces of the Netherlands, and the Swiss cantons.

XLII. The first kind of union may happen either by marriage, or by succession, or when a people choose for their king the sovereign of another country; so that those different states come to be united under a prince, who governs each in particular by its fundamental laws.

XLIII. As to the compound governments, formed by the perpetual confederacy of several states, it is to be observed, that this is the only method, by which several small governments, too weak to maintain themselves separately against their enemies, are enabled to preserve their liberties.

XLIV. These confederate states engage to each other only to exercise, with common consent, certain parts of the sovereignty, especially those, which relate to their mutual defence against foreign enemies. But each of the confederates retains an entire liberty of exercising, as it thinks proper, those parts of the sovereignty, which are not mentioned in the treaty of union, as parts, that ought to be exercised in common.

XLV. Lastly it is absolutely necessary, in confederate states, to ascertain a time and place for assembling, when occasion requires, and to invest some member with a power of convening the assembly for extraordinary affairs, and such as will not admit of delay. Or they may establish a perpetual assembly, composed of the deputies of each state, for dispatching common affairs according to the orders of their superiors.

CHAP. II.

An essay on this question, which is the best form of government?

I. IT is certainly one of the most important questions in politics, and has most exercised the men of genius to determine *the best form of government.*

II. Every form of government has its advantages and inconveniences inseparable from it. It would be in vain to seek for a government absolutely perfect; and however perfect it might appear in speculation, yet it is certain, that in practice, and under the administration of men, it will ever be attended with some particular defects.

III. But though we cannot arrive at the summit of perfection in this respect, it is nevertheless certain, that there are different degrees, which prudence must determine. That government ought to be accounted the most complete, which best answers the end of its institution, and is attended with fewest inconveniencies. Be this as it may, the examination of this question furnishes very useful instructions both to subjects and sovereigns.

IV. Disputes on this subject are of a very ancient date; and there is nothing more interesting upon the topic, than what we read in the father of history, Herodotus, who relates what passed in the council of the seven chiefs of Persia, when the government was to be reestablished after the death of Cambyses, and the punishment of the Magus, who had usurped the throne under the pretext of being Smerdis, the son of Cyrus.

V. Otanes was of opinion, that Persia should be formed into a republic, and spoke nearly in the following strain. "I am "not of opinion that we should lodge the government in the "hands of a single person. You know to what excess Cambyses "proceeded, and to what degree of insolence the Magus arrived. "How can the state be well governed in a monarchy, where a "single person is permitted to act according to his pleasure? "An authority uncontroled corrupts the most virtuous man, "and defeats his best qualities. Envy and insolence flow from "riches and prosperity; and all other vices are derived from "those two sources. Kings hate virtuous men, who oppose "their unjust designs, but caress the wicked, who favor them. "A single person cannot see every thing with his own eyes; "he often lends a favorable ear to false accusations; he sub-"verts the laws and customs of the country; he attacks the "chastity of women, and wantonly puts the innocent to death. "When the people have the government in their own hands,

"the equality among the members prevents all those evils. "The magistrates are, in this case, chosen by lot; they render "an account of their administration, and they form all their "resolutions in common with the people. I am therefore of "opinion, that we ought to reject Monarchy, and introduce a "popular government, because we rather find these advantages "in a multitude, than in a single person." Such was the harangue of Otanes.

VI. But Magabyses spoke in favor of Aristocracy. "I ap-"prove," said he, "of the opinion of Otanes with respect to "exterminating Monarchy, but I believe he is wrong in endeav-"ouring to persuade us to trust the government to the discre-"tion of the people; for surely nothing can be imagined more "stupid and insolent, than the giddy multitude. Why should we "reject the power of a single man, to deliver up ourselves to "the tyranny of a blind and disorderly populace? If a king set a-"bout an enterprise, he is at least capable of listening to advice; "but the people are a blind monster, devoid of reason and capaci-"ty. They are strangers to decency, virtue, and their own inter-"ests. They do every thing precipitately, without judgment, "and without order, resembling a rapid torrent, which cannot "be stemmed. If therefore you desire the ruin of the Per-"sians, establish a popular government. As to myself, I am "of opinion, that we should make choice of virtuous men, and "lodge the government in their hands." Such was the sen-"timent of Magabyses.

VII. After him Darius spoke in the following terms. "I "am of opinion, that there is a great deal of good sense in the "speech, which Magabyses has made against a popular state; "but I also think, that he is not entirely in the right, when he "prefers the government of a small number to Monarchy. It is "certain, that nothing can be imagined better, or more perfect, "than the administration of a virtuous man. Besides, when a "single man is master, it is more difficult for the enemy to dis-"cover his secret counsels and resolutions. When the gov-"ernment is in the hands of many, it is impossible but enmity "and hatred must arise among them; for, as every one desires "his opinion to be followed, they gradually become mutual en-

" mies. Emulation and jealousy divide them, and then their " aversions run to excess. Hence arise seditions; from sedi- " tions, murders; and from murders a monarch insensibly be- " comes necessary. Thus the government at length is sure " to fall into the hands of a single person. In a popular state " there must needs be a great store of malice and corruption. " It is true equality does not generate hatred; but it foments " friendship among the wicked, who support each other, till " some person or other, who by his behavior has acquired an " authority over the multitude, discovers the frauds, and exposes " the perfidy of those villains. Such a man shews himself re- " ally a monarch; and hence we know that Monarchy is the " most natural government, since the seditions of Aristocracy " and the corruption of Democracy are equal inducements for " our uniting the supreme power in the hands of a single per- " son."

The opinion of Darius was approved, and the government of Persia continued monarchic. We thought this passage of history sufficiently interesting to be related on this occasion.

VIII. To determine this question we must trace matters to their very source. Liberty, under which we must comprehend all the most valuable enjoyments, has two enemies in civil society. The first is licentiousness and confusion; and the second is oppression, arising from tyranny.

IX. The first of these evils arises from liberty itself, when it is not kept within due bounds.

The second is owing to the remedy, which mankind have contrived against the former evil, that is, to sovereignty.

X. The height of human felicity and prudence is to know how to guard against those two enemies. The only method is to have a well constituted government, formed with such precautions, as to banish licentiousness, and yet be no way introductive to tyranny.

XI. It is this happy temperament, that alone can give us the idea of a good government. It is evident, that the political constitution, which avoids these extremes, is so justly fitted for the preservation of order, and for providing against the necessities of the people, that it leaves them a sufficient security, that this end shall be perpetually held in view.

XII. But here we shall be asked, which government is it, that approaches nearest to this perfection? Before we answer this question, it is proper to observe, that it is very different from our being asked, which is the most legitimate government?

XIII. As for the latter question, it is certain, that governments of every kind, which are founded on the free acquiescence of the people, whether express or justified by a long and peaceable possession, are all equally legitimate, so long at least as, by the intention of the sovereign, they tend to promote the happiness of the people. Thus no other cause can subvert a government, but an open and actual violence, either in its establishment, or in its exercise; I mean usurpation, or tyranny.

XIV. To return to the principal question, I affirm, that the best government is neither absolute Monarchy, nor that, which is intirely popular. The former is too violent, encroaches on liberty, and inclines too much to tyranny; the latter is too weak, leaves the people too much to themselves, and tends to confusion and licentiousness.

XV. It were to be wished, for the glory of sovereigns and for the happiness of the people, that we could contest the fact above asserted with respect to absolute governments. We may venture to affirm, that nothing can be compared to an absolute government in the hands of a wise and virtuous prince. Order, diligence, secrecy, expedition, the greatest enterprizes, and the most happy execution, are the certain effects of it. Dignities, honors, rewards, and punishments, are all dispensed under it with justice and discernment. So glorious a reign is the era of the golden age.

XVI. But to govern in this manner a superior genius, perfect virtue, great experience, and uninterrupted application, are necessary Man, in so high an elevation, is rarely capable of so many accomplishments. The multitude of objects diverts his attention; pride seduces him, pleasure tempts him, and flattery, the bane of the great, does him more injury than all the rest. It is difficult to escape so many snares; and it generally happens, that an absolute prince becomes an easy prey to his passions, and consequently renders his subjects miserable

XVII. Hence proceeds the disgust of people to absolute governments, and this disgust sometimes is worked up to aversion and hatred. This has also given occasion to politicians to make two important reflections.

The first is, that, in an absolute government, it is rare to see the people interest themselves in its preservation. Oppressed with their burdens, they long for a revolution, which cannot render their situation more uncomfortable.

The second is, that it is the interest of princes to engage the people in the support of their government, and to give them a share therein, by privileges, tending to secure their liberty. This is the best expedient to promote the safety of princes at home, together with their power abroad, and glory in every respect.

XVIII. It has been said of the Romans, that, so long as they fought for their own interests, they were invincible; but, as soon as they became slaves under absolute masters, their courage failed, and they asked for no more than bread and public diversions; *panem et circenſes.*

XIX. On the contrary, in states, where the people have some share in the government, every individual interests himself in the public good, because each, according to his quality or merit, partakes of the general success, or feels the loss, sustained by the state. This is what renders men active and generous, what inspires them with an ardent love of their country, and with an invincible courage, so as to be proof against the greatest misfortunes.

XX. When Hannibal had gained four victories over the Romans, and killed more than two hundred thousand of that nation, when, much about the same time, the two brave Scipios perished in Spain, not to mention several considerable losses at sea and in Sicily, who could have thought, that Rome could have withstood her enemies? Yet the virtue of her citizens, the love they bore their country, and the interest they had in the government, augmented the strength of that republic in the midst of her calamities, and at last she surmounted every difficulty. Among the Lacedæmonians and Athenians we find several examples to the same point.

XXI. These advantages are not found in absolute governments. We may justly affirm, that it is an essential defect in them not to interest the people in their preservation; that they are too violent, tending too much to oppression, and very little to the good of the subject.

XXII. Such are absolute governments; those of the popular kind are no better, and we may say they have no advantage but liberty, and their leaving the people at their option to choose a better.

XXIII. Absolute governments have at least two advantages; the first is, that they have happy intervals, when in the hands of good princes; the second is, that they have a greater degree of force, activity, and expedition.

XXIV. But a popular government has none of those advantages; formed by the multitude, it bears a strong resemblance to that many-headed monster. The multitude is a mixture of all kinds of people; it contains a few men of parts, some of whom may have honest intentions; but far the greater number cannot be depended on, as they have nothing to lose, and consequently can hardly be trusted. Besides, a multitude always acts with slowness and confusion. Secrecy and precaution are advantages unknown to them.

XXV. Liberty is not wanting in popular states; nay, they have rather too much of it, since it degenerates into licentiousness. Hence it is that they are ever tottering and weak. Intestine commotions, or foreign attacks, often throw them into consternation. It is their ordinary fate to fall a prey to the ambition of their fellow citizens, or to foreign usurpation, and thus to pass from the highest liberty to the lowest slavery.

XXVI. This is proved by the experience of different nations. Even at present Poland is a striking example of the defects of popular government, from the anarchy and disorder, which reigns in that republic. It is the sport of its own inhabitants and of foreign nations, and is frequently the seat of intestine war; because, under the appearance of Monarchy, it is indeed too popular a government.

XXVII. We need only read the histories of Florence and Genoa to behold a lively exhibition of the misfortunes, which re-

publics suffer from the multitude, when the latter attempt to govern. The ancient republics, especially Athens, the most considerable in Greece, are capable of setting this truth in a stronger light.

XXVIII. In a word Rome perished in the hands of the people; and monarchy gave birth to it. The patricians, who composed the senate, by freeing it from the regal dignity, had rendered it mistress of Italy. The people, by the encroachment of the tribunes, gradually usurped the authority of the senate. From that time discipline was relaxed, and gave place to licentiousness. At length the republic was reduced, by the people themselves, to the most abject slavery.

XXIX. It is not therefore to be doubted, but popular governments are the weakest and worst of all others. If we consider the education of the vulgar, their laborious employments, their ignorance and brutality, we must quickly perceive, that they are made to be governed; and that good order and their own advantage forbid them to interfere with that province.

XXX. If therefore neither the government of the multitude, nor the absolute will of a single person, are fit to procure the happiness of a nation, it follows, that the best governments are those, which are so tempered, as to secure the happiness of the subjects by avoiding tyranny and licentiousness.

XXXI. There are two ways of finding this temperament.

The first consists in lodging the sovereign in a council so composed, both as to the number and choice of persons, that there shall be a moral certainty of their having no other interests, than those of the community, and of their being always ready to give a faithful account of their conduct. This is what we see happily practised in most republics.

XXXII. The second is to limit the sovereignty of the prince in monarchic states, by fundamental laws, or to invest the person, who enjoys the honors and title of sovereignty, with only a part of the supreme authority, and to lodge the other in different hands, for example in a council or parliament. This is what gives birth to limited monarchies.*

XXXIII. With regard to Monarchies, it is proper for example, that the military and legislative powers, together with that

* See part i. chap. vii. section 26, &c.

of raising taxes, should be lodged in different hands, to the end, that they may not be easily abused. It is easy to conceive, that these restrictions may be made different ways. The general rule, which prudence directs, is to limit the power of the prince so, that no danger may be apprehended from it; but at the same time not to carry things to excess, for fear of weakening the government.

XXXIV. By following this just medium, the people will enjoy the most perfect liberty, since they have all the moral securities, that the prince will not abuse his power. The prince, on the other hand, being as it were under a necessity of doing his duty, considerably strengthens his authority, and enjoys a high degree of happiness and solid glory; for, as the felicity of the people is the end of government, it is also the surest foundation of the throne. See what has been already said on this subject.

XXXV. This species of Monarchy, limited by a mixed government, unites the principal advantages of absolute Monarchy, and of the Aristocratic and popular governments; at the same time it avoids the dangers and inconveniences peculiar to each. This is the happy temperament, which we have been endeavoring to find.

XXXVI. The truth of this remark has been proved by the experience of past ages. Such was the government of Sparta. Lycurgus, knowing that each of the three sorts of simple governments had very great inconveniences; that Monarchy easily fell into arbitrary power and tyranny; that Aristocracy degenerated into the oppressive government of a few individuals; and Democracy into a wild and lawless dominion; thought it expedient to combine these three governments in that of Sparta, and mix them as it were into one, so that they might serve as a remedy and counterpoise to each other. This wise legislator was not deceived, and no republic preserved its laws, customs, and liberty, longer than that of Sparta.

XXXVII. It may be said, that the government of the Romans, under the republic, united in some measure, as that of Sparta, the three species of authority. The consuls held the place of kings, the senate formed the public counsel, and the people had also some share in the administration.

XXXVIII. If modern examples are wanted, is not England at present a proof of the excellency of mixed government? Is there a nation, every thing considered, that enjoys a higher degree of prosperity or reputation?

XXXIX. The northern nations, which subverted the Roman empire, introduced into the conquered provinces that species of government, which was then called Gothic. They had kings, lords, and commons; and experience shows, that the states, which have retained that species of government have flourished more than those, which have devolved the whole government into the hands of a single person.

XL. As to Aristocratic governments, we must first distinguish Aristocracy by birth, from that, which is elective. The former has several advantages, but is also attended with very great inconveniences. It inspires the nobility with pride, and entertains, between the grandees and the people, division, contempt, and jealousy, which are productive of considerable evils.

XLI. But the latter has all the advantages of the former, without its defects. As there is no privilege of exclusion, and as the door of preferment is open to all the citizens, we find neither pride nor division among them. On the contrary a general emulation glows in the breasts of all the members, converting every thing to the public good, and contributing infinitely to the preservation of liberty.

XLII. Thus if we suppose an elective Aristocracy, in which the sovereignty is in the hands of a council so numerous, as to comprehend the chief property of the republic, and never to have any interest opposite to that of the state; if besides this counsel be so small, as to maintain order, harmony, and secrecy; if it be chosen from among the wisest, and most virtuous citizens; and lastly if its authority be limited and kept within rule; there can be no doubt but such a government is very well adapted to promote the happiness of a nation.

XLIII. The most difficult point in these goverments is to temper them in such a manner, that, while the people are assured of their liberty, by giving them some share in the government, these assurances shall not be carried too far, so as to make the government approach too near to Democracy; for the preceding reflections sufficiently evince the inconveniences, which would result from this step.

XLIV. Let us therefore conclude, from this inquiry into the different forms of government, that the best are either a limited Monarchy, or an Aristocracy tempered with Democracy, by some privileges in favour of the body of the people.

XLV. It is true there are always some deductions to be made from the advantages, which we have ascribed to those governments; but this is owing to the infirmity of human nature, and not to the establishments. The constitution above described is the most perfect, that can be imagined; and, if we adulterate it by our vices and follies, this is the fate of all sublunary affairs; and since a choice must be made, the best is that, attended with the fewest inconveniences.

XLVI. In a word, should it still be asked, which government is best? I would answer, that every species of government is not equally proper for every nation; and that, in this point, we must have a regard to the humor and character of the people, and to the extent of the country.

XLVII. Great states can hardly admit of republican governments; hence a monarchy, wisely limited, suits them better. But as to states of an ordinary extent, the most advantageous government for them is an elective aristocracy, tempered with some privileges in favor of the body of the people.

CHAP. III.

Of the different ways of acquiring sovereignty.

I. THE only just foundation of sovereignty is the consent, or will of the people.* But as this consent may be given different ways, according to the different circumstances attending it; we may distinguish the several ways of acquiring sovereignty.

II. Sometimes a people are constrained, by force of arms, to submit to the dominion of a conqueror; at other times the

* On this subject see part i. chap vi

people, of their own accord, confer the supreme authority on some particular person. Sovereignty may therefore be acquired either by force and violence, or in a free and voluntary manner.

III. These different acquisitions of sovereignty may agree in some measure to all sorts of governments; but, as they are most remarkable in monarchies, it shall be principally with respect to the latter, that we shall examine this question.

1. *Of conquest.*

IV. Sovereignty is sometimes acquired by force, or rather is seized by conquest or usurpation.

V. Conquest is the acquisition of sovereignty by the superiority of a foreign prince's arms, who reduces the vanquished to submit to his government. Usurpation is properly made by a person naturally subject to him, from whom he wrests the supreme power; but custom often confounds these two terms.

VI. There are several remarks to be made on conquest, considered as a method of acquiring the sovereignty.

1. Conquest in itself is rather the occasion of acquiring the sovereignty, than the immediate cause of this acquisition. The immediate cause is the consent of the people, either tacit or expressed. Without this consent the state of war always subsists between two enemies, and one is not obliged to obey the other. All that can be said is, that the consent of the vanquished is extorted by the superiority of the conqueror.

VII. 2. Lawful conquest supposes, that the conqueror has had just reason to wage war against the vanquished. Without this, conquest is by no means of itself a just title; for a man cannot acquire a sovereignty over a nation by bare seizure, as over a thing, which belongs to no proprietor. Thus when Alexander waged war against distant nations, who had never heard of his fame, certainly such a conquest was no more a lawful title to the sovereignty over those people, than robbery is a lawful manner of becoming rich. The quality and number of the persons do not change the nature of the action, the injury is the same, and the crime equal.

VIII. But if the war be just, the conquest is also the same; for, in the first place, it is a natural consequence of the victory; and the vanquished, who deliver themselves to the conqueror, only purchase their lives by the loss of their liberties. Besides, the vanquished having, through their own fault, engaged in an unjust war, rather than grant the satisfaction they owed, are supposed to have tacitly consented to the conditions, which the conqueror should impose upon them, provided they were neither unjust nor inhuman.

IX. 3. But what must we think of unjust conquests, and of submission, extorted by mere violence? Can it give a lawful right? I answer, we should distinguish whether the usurper has changed the government from a republic into a monarchy, or dispossessed the lawful monarch. In the latter case, he is obliged to restore the crown to the right owner, or to his heirs, till it can be presumed that they have renounced their pretensions, and this is always presumed, when a considerable time is elapsed without their being willing or able to make any effort to recover the crown?

X. The law of nations therefore admits of a kind of prescription with respect to sovereignty. This is requisite for the interest and tranquillity of societies; a long and quiet possession of the supreme power must establish the legality of it, otherwise there would never be an end of disputes in regard to kingdoms and their limits; this would be a source of perpetual quarrels, and there would hardly be any such thing, as a sovereign lawfully possessed of the supreme authority.

XI. It is indeed the duty of the people, in the beginning, to resist the usurper with all their might, and to continue faithful to their prince; but if, in spite of their utmost efforts, their sovereign is defeated, and is no longer able to assert his right, they are obliged to no more, but may lawfully take care of their own preservation.

XII. The people cannot live in a state of anarchy, and as they are not obliged to expose themselves to perpetual wars, in defence of the rights of their former sovereigns, their consent may render the right of the usurper lawful; and in this

case the sovereign dethroned ought to rest contented with the loss of his dominions, and consider it as a misfortune.

XIII. With regard to the former case, when the usurper has changed the republic into a monarchy; if he governs with moderation and equity, it is sufficient, that he has reigned peaceably for some time, to afford reason to believe, that the people consent to his dominion, and to efface what was defective in the manner of his acquiring it. This may be very well applied to the reign of Augustus. But if, on the contrary, the prince, who has made himself master of the republic, exercises his power in a tyrannical manner, and oppresses his subjests, they are not then obliged to obey him. In these circumstances the longest possession imports no more than a long continuation of injustice.

2. *Of the election of sovereigns.*

XIV. But the most legitimate way of acquiring sovereignty is founded on the free consent of the people. This is effected either by the way of election, or by the right of succession; for which reason kingdoms are distinguished into elective and hereditary.

XV. Election is that act, by which the people design or nominate a certain person, whom they judge capable of succeeding the deceased king, to govern the state; and, so soon as this person has accepted the offer of the people, he is invested with the sovereignty.

XVI. We may distinguish two sorts of elections, one entirely free and the other limited in certain respects; the former, when the people can choose whom they think proper, and the latter, when they are obliged for example to choose a person of a certain nation, a particular family, religion, &c. Among the ancient Persians no man could be king, unless he had been instructed by the Magi.*

XVII. The time between the death of the king and the election of his successors is called an *Interregnum*.

XVIII. During the *Interregnum* the state is, as it were, an

* See Cic. de Divin. lib. i. cap. iv.

imperfect body without a head; yet the civil society is not dissolved. The sovereignty then returns to the people, who, till they choose a new king to exercise it, have it even in their power to change the form of government.

XIX. But it is a wise precaution to prevent the troubles of an *Interregnum*, to nominate beforehand those, who during that time, are to hold the reigns of government. Thus in Poland the archbishop of Gnesna, with the deputies of great and little Poland are appointed for that purpose.

XX. The persons, invested with this employmant, are called *Regents of the kingdom*; and the Romans styled them *Interreges*. They are temporary, and as it were provisional magistrates, who, in the name and by the authority of the people, exercise the acts of sovereignty, so that they are obliged to give an account of their administration. This may suffice for the way of election.

3. *Of succession to the crown.*

XXI. The other manner of acquiring sovereignty is the right of succession, by which princes, who have once acquired the crown, transmit it to their successors.

XXII. It may seem at first, that elective kingdoms have the advantage over those, which are hereditary, because, in the former, the subjects may always choose a prince of merit, and capable of governing. However experience shows, that, taking all things into the account, the way of succession is more conducive to the welfare of the state.

XXIII. For, 1. by this method we avoid the vast inconveniences, both foreign and domestic, which arise from frequent elections. 2. There is less contention and uncertainty with respect to the title of the successor. 3. A prince, whose crown is hereditary, all other circumstances being equal, will take greater care of his kingdom, and spare his subjects more, in hopes of leaving the crown to his children, than if he only possessed it for life. 4. A kingdom, where the succession is regulated, has greater stability and force. It can form mightier projects, and pursue them more vigorously, than if it were elective. 5. In a word, the person of the prince strikes the people with greater

reverence, and they have reason to hope, that the splendor of his descent, and the impressions of his education, will inspire him with the necessary qualities for holding the reigns of government.

XXIV. The order of succession is regulated either by the will of the last king, or by that of the people.

XXV. In kingdoms truly patrimonial, every king has a right to regulate the succession, and to dispose of the crown as he has a mind; provided the choice he makes of his successor, and the manner, in which he settles the state, be not manifestly opposite to the public good, which, even in patrimonial kingdoms, is ever the supreme law.

XXVI. But if the king, prevented perhaps by death, has not named his successor, it seems natural to follow the laws or customs, established in that country, concerning private inheritances, so far at least, as the safety of the state will admit.* But it is certain that in those cases, the most approved and powerful candidate will always carry it.

XXVII. In kingdoms, which are not patrimonial, the people regulate the order of succession. And, although they may establish the succession as they please, yet prudence requires they should follow the method most advantageous to the state, best adapted to maintain order and peace, and most expedient to promote the public security.

XXVIII. The usual methods are, a succession simply hereditary, which follows nearly the rules of common inheritances; and the lineal succession, which receives more particular limitations.

XXIX. The good of the state therefore requires, that a succession simply hereditary should vary in several things from private inheritances.

1. The kingdom ought to remain indivisible, and not be shared among several heirs in the same degree; for, in the first place, this would considerably weaken the state, and render it less proper to resist the attacks of a foreign enemy. Besides, the subjects, having different masters, would no longer be so

* See the Law of Nature and Nations, book vii. chap. vii. § 11.

closely united among themselves; and lastly this might lay a foundation for intestine wars, as experience has too often evinced.

XXX. 2. The crown ought to remain in the posterity of the first possessor, and not pass to his relations in a collateral line, and much less to those, who have only connexions of affinity with him. This is no doubt, the intention of a people, who have rendered the crown hereditary in any one family. Thus, unless it is otherwise determined, in default of the descendants of the first possessor, the right of disposing of the kingdom returns to the nation.

XXXI. 3. Those only ought to be admitted to the succession, who are born of a marriage conformable to the laws of the nation. For this there are several reasons. 1. This was undoubtedly the intention of the people when they settled the crown on the descendants of the king. 2. The people have not the same respect for the king's natural or base sons, as for his lawful children. 3. The father of natural children is not known for certain, there being no sure method of ascertaining the father of a child, born out of wedlock; and yet it is of the last importance, that there should be no doubt about the birth of those, who are to reign, in order to avoid the disputes which might embroil the kingdom. Hence it is, that, in several countries, the queen is delivered in public, or in the presence of several persons.

XXXII. 4. Adopted children, not being of the royal blood, are also excluded from the crown, which ought to revert to the people so soon as the royal line fails.

XXXIII. 5. Among those, who are in the same degree, whether really or by representation, the males are to be preferred to the females; because they are presumed more proper for the command of armies, and for exercising the other functions of government.

XXXIV. 6. Among several males or several females in the same degree, the eldest ought to succeed. It is birth, which gives this right; for the crown being at the same time indivisible and hereditary, the eldest, in consequence of his birth, has

a preference, of which the younger cannot deprive him. But it is just, that the eldest should give his brothers a sufficiency to support themselves decently, and in a manner suitable to their rank. What is allotted them for this purpose is distinguished by the name of *Appennage*.

XXXV. 7. Lastly we must observe, that the crown does not pass to the successor in consequence of the pleasure of the deceased king, but by the will of the people, who have settled it on the royal family. Hence it follows, that the inheritance of the particular estate of the king, and that of the crown, are of a quite different nature, and have no connexion with each other ; so that, strictly speaking, the successor may accept of the crown, and refuse the private inheritance ; and in this case he is not obliged to pay the debts, due upon this particular estate.

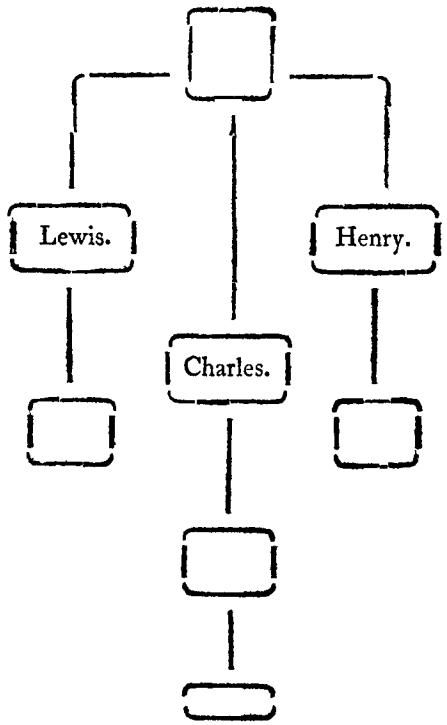
XXXVI. But it is certain, that honor and equity hardly permit a prince, who ascends the throne, to use this right ; and that, if he has the glory of his royal house at heart, he will, by economy and frugality, be enabled to pay the debts of his predecessor. But this ought not to be done at the expense of the public. These are the rules of succession simply hereditary.

XXXVII. But since in this hereditary succession, where the next heir to the deceased king is called to the crown, terrible disputes may happen concerning the degree of proximity, when those, who remain, are a little distant from the common stem ; several nations have established the lineal succession from branch to branch, the rules of which are these following.

1. All those descended from the royal founder are accounted so many lines or branches, each of which has a right to the crown according to the degree of its proximity.

2. Among those of this line, who are in the same degree, in the first place sex, and then age, gives the preference.

3. We must not pass from one line to another, so long as there remains one of the preceding, even though there should be another line of relations nearer to the deceased king. For example :



A king leaves three sons, Lewis, Charles, and Henry. The son of Lewis, who succeeds him, dies without children ; Charles leaves a grandson ; Henry is still living, and is the uncle of the deceased king ; the grandchild of Charles is only his cousin german ; and yet this grandchild will have the crown, as being transmitted to him by his grandfather, whose line has excluded Henry and his descendants, till it be quite extinct.

4. Every one has therefore a right to succeed in his rank, and transmits this right to his descendants, with the same order of succession, though he has never reigned himself ; that is to say, the right of the deceased passes to the living, and that of the living to the deceased.

5. If the last king has died without issue, we make choice of the nearest line to his, and so on.

XXXVIII. There are two principal kinds of lineal succession, namely *Cognatic* and *Agnatic*. These names come from the Latin words *Cognati* and *Agnati*, the former of which, in the Roman law, signifies the relations on the mother's side, and the latter those, on the father's side.

XXXIX. The *Cognatic* lineal succession is that, which does not exclude women from the succession, but only calls them after the males in the same line; so that, when only women remain, there is no transition made to another line, but the succession runs back to the female again, in case the males, who were superior or equal to them in other respects, shall happen to fail with all their descendants. This succession is also called *Castilian*. Hence it follows, that the daughter of the son of the last king is preferred to the son of the daughter of the same prince, and the daughter of one of his brothers to the son of one of his sisters.

XL. The *Agnatic* lineal succession is that, in which only the male issue of males succeeds; so that women, and all those descending from them, are perpetually excluded. It is also called the *French* succession. This exclusion of women and their descendants is principally established to hinder the crown from devolving to a foreign race, by the marriage of princesses of the blood royal.

XLI. These are the principal kinds of succession in use, and may be tempered in different manners by the people; but prudence directs us to prefer those, which are subject to the least difficulty; and in this respect the lineal succession has the advantage over that, which is simply hereditary.

XLII. Several questions, equally curious and important, may be started, with regard to the succession of kingdoms. On this subject the reader may consult Grotius.* We shall only examine who has a right to decide the disputes, that may arise between two or more pretenders to a crown?

1. If the kingdom be patrimonial, and disputes arise after the death of the king, the best method is to refer the cause to arbitrators of the royal family. The welfare and peace of the kingdom recommended this conduct.

2. But if, in kingdoms established by the voluntary act of

* The Right of war and peace, book ii. chap. vii. sect. 25, &c.

the people, the dispute arises even in the king's life time, he is not a competent judge of it; for then the people must have invested him with the power of regulating the succession according to his own pleasure, which is not to be supposed. It therefore belongs to the people to decide the dispute, either by themselves or by their representatives.

3. The same holds true, if the dispute does not arise till after the death of the king. In this case it is either necessary to determine which of the pretenders is nearest to the deceased sovereign; and this is a matter of fact, which the people only ought to determine, because they are principally interested in it.

4. Or the point is to know what degree, or line, ought to have the preference according to the order of succession, establish by the people; and then it is a matter of right. Now who can determine better this point, than the people themselves, who have established the order of succession? Otherwise there would be no method of deciding the dispute but by force of arms, which would be entirely opposite to the good of the society.

XLIII. But, to avoid every perplexity of this kind, it would be proper that the people should, by a fundamental law, expressly reserve to themselves the right of judging in the above cases. What has been said is sufficient on the different ways of acquiring sovereignty.

CHAP. IV.

Of the different ways of losing sovereignty.

I. LET us now inquire how sovereignty may be lost; and in this there is no great difficulty, after the principles we have established on the ways of acquiring it.

II. Sovereignty may be lost by abdication, that is, when the reigning prince renounces the sovereignty, so far as it regards himself. Of this the history even of latter ages furnishes us with remarkable examples.

III. As sovereignty derives its original from a covenant between the king and his subjects; if, for plausible reasons, the

king thinks proper to renounce the supreme dignity, the people have not properly a right to constrain him to keep it.

IV. But such an abdication must not be made at an unseasonable juncture; as for instance when the kingdom is likely to sink into a minority, especially if it be threatened with a war; or when the prince, by his bad conduct, has thrown the state into a dangerous convulsion, in which he cannot abandon it without betraying his trust, and ruining his country.

V. But we may safely say, that a prince very rarely finds himself in such circumstances, as should engage him to renounce the crown. However his affairs may be situated, he may ease himself of the drudgery of government, and still retain the superior command. A king ought to die upon the throne; and it is a weakness unworthy of him, to divest himself of his authority. Besides, experience has shown, that abdication is too frequently attended with unhappy catastrophes.

VI. It is therefore certain, that a prince may, for himself, renounce the crown, or the right of succession. But there is great doubt whether he can do it for his children.

VII. To judge rightly of this point, which has embarrassed so many politicians, we must establish the following principles.

1. Every acquisition of right or power over another, and consequently of sovereignty, supposes the consent of him, over whom this right is to be acquired, and the acceptance of him, who is to acquire it. Till this acceptance is settled, the intention of the former does not produce, in favor of the latter, an absolute and irrevocable right. It is only a simple designation, which he is at liberty to accept or not.

VIII. 2. Let us apply these principles. The princes of the blood royal, who have accepted the will of the people, by which the crown has been conferred on them, have certainly thereby acquired an absolute and irrevocable right, of which they cannot be stripped without their consent.

IX. 3. With regard to those, who are not yet born, as they have not accepted the designation of the people, they have not as yet acquired any right. Hence it follows, that in relation to them, this designation is only an imperfect act, a kind of expectancy, the completion of which entirely depends on the will of the people.

X. 4. But it may be said, the ancestors of those, who are not yet born, have consented and stipulated for them, and consequently received the engagement of the people in their behalf. But this is rather an argument in favor of renunciation, which it effectually establishes; for as the right of those, who are not yet born, has no other foundation, than the concurrence of the will of the people and of their ancestors, it is evident that this right may be taken from them, without injustice, by those very persons, from the single will of whom they hold it.

XI. 5. The single will of a prince, without the consent of the nation, cannot effectually exclude his children from the crown, to which the people have called them. In like manner the single will of the people, without the consent of the prince, cannot deprive his children of an expectancy, which their father has stipulated with the people for in their favor. But, if these two wills unite, they may without doubt alter what they have established.

XII. 6. It is true, this renunciation ought not to be made without a cause, and through inconstancy and levity. Under these circumstances it cannot be justified, and the good of the state does not permit, that, without necessity, an alteration should be made in the order of the succession.

XIII. 7. If, on the other hand, the nation be so situated, that the renunciation of a prince, or a princess, is absolutely necessary to its tranquillity and happiness, then the supreme law of the public good, which has established the order of the succession, requires it should be set aside.

XIV. 8. Let us add, that it is for the general good of nations, that such renunciations be valid, the parties interested should not attempt to disannul them. For there are times and conjunctures, in which they are necessary for the welfare of the state; and if those, with whom we are treating, should come to think, that the renunciation would afterwards be set aside, they certainly would have nothing to do with us. Now this must be productive of bloody and cruel wars. Grotius decides this question nearly in the same manner. The reader may see what he says of it.*

* Book ii. chap. vii. § 26. and book ii. chap. iv. § 12.

XV. 9. Since war or conquest is a method of acquiring sovereignty, as we have seen in the preceding chapter, it is evidently also a mean of losing it.

XVI. With regard to tyranny and the deposing of sovereigns, both which are also ways of losing the supreme power, as these two articles bear some relation to the duties of subjects towards their sovereigns, we shall treat of them in the next chapter more particularly, after we have considered those duties.

CHAP. V.

Of the duties of subjects in general.

I. ACCORDING to the plan we have laid down, we must here treat of the duties of subjects. Puffendorf has given us a clear and distinct idea of them, in the last chapter of his *Duties of a Man and a Citizen.* We shall follow him step by step.

II. The duties of subjects are either general or particular; and both flow from their state and condition.

III. All subjects have this in common, that they live under the same sovereign and the same government, and that they are members of the same state. From these relations the general duties arise.

IV. But as they have different employments, enjoy different posts in the state, and follow different professions; hence also arise their particular duties.

V. It is also to be observed, that the duties of subjects suppose and include those of man, considered simply as such, and as a member of human society in general.

VI. The general duties of subjects have, for their object, either the governors of the state, or the whole body of the people, viz. their country, or the individuals among their fellow subjects.

VII. As to sovereigns and governors of the state, every subject owes them that respect, fidelity, and obedience, which their character demands. Hence it follows, that we ought to be contented with the present government, and to form no cabals

nor seditions, but to be attached to the interest of the reigning prince more, than to that of any other person; to pay him honor, to think favorably of him, and to speak with respect of him and his actions. We ought even to have a veneration for the memory of good princes, &c.

VIII. With respect to the whole body of the state, a good subject makes it his rule to prefer the public welfare to every thing else, bravely to sacrifice his fortune, and his private interests, and even his life, for the preservation of the state; and to employ all his abilities and his industry to advance the honor, and to procure the advantage of his native country.

IX. Lastly the duty of a subject to his fellow subjects consists in living with them, as much as he possibly can, in peace and strict union, in being mild, complaisant, affable, and obliging to each of them, in creating no trouble by a rude or litigious behaviour, and bearing no envy or prejudice against the happiness of others, &c.

X. As to the particular duties of subjects, they are connected with the particular employments, which they follow in society. We shall here lay down some general rules in regard to this matter.

1. A subject ought not to aspire after any public employment, nor even to accept of it, when he is sensible, that he is not duly qualified for it. 2. He ought not to accept of more employments, than he can discharge. 3. He should not use unlawful means to obtain public offices. 4. It is even sometimes a kind of justice not to seek after certain employments, which are not necessary to us, and which may be as well filled by others, for whom they are perhaps more adapted. 5. He ought to discharge the several functions of the employments he has obtained, with the utmost application, exactness, and fidelity.

XI. Nothing is more easy, than to apply these general maxims to the particular employments of society, and to draw inferences proper to each of them; as for instance, with respect to ministers and counsellors of state, ministers of religion, public professors, magistrates and judges, officers in the army and soldiers, receivers of taxes, ambassadors, &c.

XII. The particular duties of subjects cease with the public

charges, whence they arise. But as to the general duties, they subsist so long, as a person remains subject to the state. Now a man ceases to be a subject principally three ways. 1. When he goes to settle elsewhere. 2. When he is banished from a country for some crime and deprived of the rights of a subject. 3. And lastly when he is reduced to a necessity of submitting to the dominion of a conqueror.

XIII. It is a right inherent in all free people, that every man should have the liberty of removing out of the commonwealth, if he thinks proper. In a word, when a person becomes member of a state, he does not thereby renounce the care of himself and his own private affairs. On the contrary, he seeks a powerful protection, under the shelter of which he may procure to himself both the necessaries and the conveniences of life. Thus the subjects of a state cannot be denied the liberty of settling elsewhere, in order to procure those advantages, which they do not enjoy in their native country.

XIV. On this occasion there are however certain maxims of duty and decency, which cannot be dispensed with.

1. In general a man ought not to quit his native country without the permission of his sovereign. But his sovereign ought not to refuse it him, without very important reasons.

2. It would be contrary to the duty of a good subject to abandon his native country at an unseasonable juncture, and when the state has a particular interest, that he should stay at home.*

3. If the laws of the country have determined any thing in this point, we must be determined by them; for we have consented to those laws in becoming members of the state.

XV. The Romans forced no person to continue under their government, and Cicero† highly commends this maxim, calling it the surest foundation of liberty, "which consists in being "able to preserve or renounce our right, as we think proper."

* See Grotius on the Right of War and Peace, book ii. chap. iv. § 24.

† O excellent and divine laws, enacted by our ancestors in the beginning of the Romon empire—Let no man change his city against his will, nor let him be compelled to stay in it. These are the surest foundations of our liberty, that every one should have it in his power either to preserve or relinquish his right. Orat. pro L. Corn. Balb. cap. 13. adde Leg. 12. sect. 9. Digest. de cap. diminut. et postlim. lib. 49. tit. 15.

XVI. Some propose this question, whether subjects can go out of the state in great companies? In this point Grotius and Puffendorf are of opposite sentiments.* As for my own part, I am of opinion, that it can hardly happen, that subjects should go out of the state in large companies, except in one or other of these two cases; either when the government is tyrannical, or when a multitude of people cannot subsist in the country; as when manufacturers, for example, or other tradesmen, cannot find the means of making or distributing their commodities. Under these circumstances, the subjects may retire if they will, and they are authorized so to do by virtue of a tacit exception. If the government be tyrannical, it is the duty of the sovereign to change his conduct; for no subject is obliged to live under tyranny. If misery forces them to remove, this is also a reasonable exception against the most express engagements, unless the sovereign furnishes them with the means of subsistence. But, except in those cases, were the subjects to remove in great companies, without a cause, and by a kind of general desertion, the sovereign may certainly oppose their removal, if he finds that the state suffers great prejudice by it.

XVII. A man ceases to be a subject of the state, when he is forever banished, in punishment for some crime. For the moment, that the state will not acknowledge a man to be one of its members, but drives him from its territories, he is released from his engagements as a subject. The civilians call this punishment a civil death. But it is evident that the state, or sovereign, cannot expel a subject from their territories whenever they please, unles he has deserved it by the commission of some crime.

XVIII. Lastly a man may cease to be a subject by the superior force of an enemy, by which he is reduced to a necessity of submitting to his dominion; and this necessity is founded on the right, which every man has to take care of his own preservation.

* See Grotius, *ubi supra*, and Puffendorf of the Law of Nature and Nations, book viii. chap. xi. § 4.

CHAP. VI.

Of the inviolable rights of sovereignty, of the deposing of sovereigns, of the abuse of the supreme power, and of tyranny.

I. WHAT we have said in the preceding chapter, concerning the duties of subjects to their sovereigns, admits of no difficulty. We are agreed in general upon the rule, that the person of the sovereign should be sacred and inviolable. But the question is whether this prerogative of the sovereign be such, that it is never lawful for the people to rise against him, to cast him from the throne, or to change the form of government?

II. In answer to this question, I observe in the first place, that the nature and end of government lay an indispensable obligation on all subjects not to resist their sovereign, but to respect and obey him, so long as he uses his power with equity and moderation, and does not exceed the limits of his authority.

III. It is this obligation to obedience in the subjects, that constitutes the whole force of civil society and government, and consequently the entire felicity of the state. Whoever therefore rises against the sovereign, or makes an attack upon his person or authority, renders himself manifestly guilty of the greatest crime, which a man can commit, since he endeavours to subvert the first foundations of the public felicity, in which that of every individual is included.

IV. But if this maxim be true with respect to individuals, my we also apply it to the whole body of the nation, of whom the sovereign originally holds his authority? If the people think fit to resume, or to change the form of government, why should they not be at liberty to do it? Cannot they, who make a king, also depose him?

V. Let us endeavour to solve this difficulty. I therefore affirm, that the people themselves, that is, the whole body of the nation, have not a right to depose the sovereign, or to change the form of government, without any other reason than their own pleasure, and purely from inconstancy or levity.

VI. In general the same reasons, which establish the necessity of government and supreme authority in society, also prove, that the government ought to be stable, and that the people should not have the power of deposing their sovereigns whenever, through caprice or levity, they are inclined so to act, and when they have no sound reason to change the form of government.

VII. Indeed it would be subverting all government, to make it depend on the caprice or inconstancy of the people. It would be impossible for the state to be ever settled amidst those revolutions, which would expose it so often to destruction; for we must either grant, that the people cannot dispossess their sovereign, and change the form of government; or we must give them, in this respect, a liberty without control.

VIII. An opinion, which saps the foundation of all authority, which destroys all power, and consequently all society, cannot be admitted as a principle of reasoning, or of conduct in politics.

IX. The law of congruity or fitness is in this case of the utmost force. What should we say of a minor, who, without any other reason, than his caprice, should withdraw from his guardian, or change him at pleasure? The present case is in point the same. It is with reason, that politicians compare the people to minors; neither being capable of governing themselves. They must be subject to tuition, and this forbids them to withdraw from their authority, or to alter the form of government, without very substantial reasons.

X. Not only the law of congruity forbids the people wantonly to rise against their sovereign or the government; but justice also makes the same prohibition.

XI. Government and sovereignty are established by mutual agreement betwixt the governor and the governed; and justice requires that people should be faithful to their engagements. It is therefore the duty of the subjects to keep their word, and religiously to observe their contract with their sovereign, so long as the latter performs his engagements.

XII. Otherwise the people would do a manifest injustice to the sovereign, in depriving him of a right, which he has lawful-

ly acquired, which he has not used to their prejudice, and for the loss of which they cannot indemnify him.

XIII. But what must we think of a sovereign, who, instead of making a good use of his authority, injures his subjects, neglects the interest of the state, subverts the fundamental laws, drains the people by excessive taxes, which he squanders away in foolish and useless expenses, &c? Ought the person of such a king to be sacred to the subjects? Ought they patiently to submit to all his extortions? Or can they withdraw from his authority?

XIV. To answer this question, which is one of the most delicate in politics, I observe that disaffected, mutinous, or seditious subjects, often make things, highly innocent, pass for acts of injustice in the sovereign. The people are apt to murmur at the most necessary taxes; others seek to destroy the government, because they have not a share in the administration. In a word, the complaints of subjects oftener denote the bad humour and seditious spirit of those, who make them, than real disorders in the government, or injustice in those, who govern.

XV. It were indeed to be wished, for the glory of sovereigns, that the complaints of subjects never had juster foundations. But history and experience teach us, that they are too often well founded. Under these circumstances, what is the duty of subjects? Ought they patiently to suffer? Or may they resist their sovereign?

XVI. We must distinguish between the extreme abuse of sovereignty, which degenerates manifestly into tyranny, and tends to the intire ruin of the subjects; and a moderate abuse of it, which may be attributed to human weakness, rather than to an intention of subverting the liberty and happiness of the people.

XVII. In the former case, I think the people have a right to resist their sovereign, and even to resume the sovereignty, which they have given him, and which he has abused to excess. But, if the abuse be only moderate, it is their duty to suffer something, rather than to rise in arms against their sovereign.

XVIII. This distinction is founded on the nature of man, and the nature and end of government. The people must patiently bear the slight injustices of their sovereign, or the moderate abuse of his power, because this is no more, than a tribute due to humanity. It is on this condition they have invested him with the supreme authority. Kings are men as well as others, that is to say, liable to be mistaken, and, in some instances, to fail in point of duty. Of this the people cannot be ignorant, and on this footing they have treated with their sovereign.

XIX. If, for the smallest faults, the people had a right to resist or depose their sovereign, no prince could maintain his authority, and the community would be continually distracted; such a situation would be directly contrary both to the end and institution of government, and of sovereignty.

XX. It is therefore right to overlook the lesser faults of sovereigns, and to have a regard to the laborious and exalted office, with which they are invested for our preservation. Tacitus beautifully says; "We must endure the luxury and avarice of "sovereigns, as we endure the barrenness of a soil, storms, "and other inconveniences of nature. There will be vices as "long as there are men; but these are not continual, and are "recompensed by the intermixture of better qualities."*

XXI. But if the sovereign should push things to the last extremity, so that his tyranny becomes insupportable, and it appears evident, that he has formed a design to destroy the liberty of his subjects, then they have a right to rise against him, and even to deprive him of the supreme power.

XXII. This I prove, 1. by the nature of tyranny, which of itself degrades the sovereign of his dignity. Sovereignty always supposes a beneficent power. We must indeed make some allowance for the weakness inseparable from humanity; but beyond that, and when the people are reduced to the last extremity, there is no difference between tyranny and robbery. The one gives no more right than the other, and we may lawfully oppose force to violence.

XXIII. 2. Men have established civil society and government, for their own good; to extricate themselves from trou-

* Quomodo sterilitatem, aut nimios imbres, et cætera naturæ mala, ita luxum vel avaritiam dominantium tolerate. Vitia erunt donec homines; sed neque hæc continua, et melhorum intervente pensantur. *Hist.* lib. iv cap. lxxiv. N. 4.

bles, and to be rescued from the evils of a state of nature. But it is highly evident, that, if the people were obliged to suffer every oppression from their sovereigns, and never to resist their encroachments, they would be reduced to a far more deplorable state, than that, which they attempted to avoid, by the institution of sovereignty. It can never surely be presumed, that this was the intention of mankind.

XXIV. 3. Even a people, who have submitted to an absolute government, have not thereby forfeited the right of asserting their liberty, and taking care of their preservation, when they find themselves reduced to the utmost misery. Absolute sovereignty in itself is no more, than the highest power of doing good; now the highest power of procuring the good of a person, and the absolute power of destroying him at pleasure, have no connexion with each other. Let us therefore conclude, that never any nation had an intention to submit their liberties to a sovereign in such a manner, as never to have it in their power to resist him, not even for their own preservation.

XXV. "Suppose," says Grotius,* "one had asked those, "who first formed the civil laws, whether they intended to im- "pose on all the subjects the fatal necessity of dying, rather than "taking up arms to defend themselves against the unjust vio- "lence of their sovereign? I know not whether they would "have answered in the affirmative. It is rather reasonable to "believe they would have declared, that the people ought not to "endure all manner of injuries, except perhaps when matters are "so situated, that resistance would infallibly produce very great "troubles in the state, or tend to the ruin of many innocent "people."

XXVI. We have already proved,† that no person can renounce his liberty to such a degree, as that here mentioned. This would be selling his own life, that of his children, his religion, in a word every advantage he enjoys, which it is not certainly in any man's power to do. This may be illustrated by the comparison of a patient and his physician.

XXVII. If therefore the subjects have a right to resist the

* Book i. chap. iv. § 7. N. 2.
† Part i. chap. vii. N. 22. &c.

manifest tyranny even of an absolute prince, they must, for a stronger reason, have the same power with respect to a prince, who has only a limited sovereignty, should he attempt to invade the rights and properties of his people.*

XXVIII. We must indeed patiently suffer the caprice and austerity of our masters, as well as the bad humor of our fathers and mothers; but, as Seneca says, "though a person "ought to obey a father in all things, yet he is not obliged to "obey him, when his commands are of such a nature, that he "ceases thereby to be a father."

XXIX. But it is here to be observed, that when we say the people have a right to resist a tyrant, or even to depose him, we ought not, by the word people, to understand the vile populace or dregs of a country, nor the cabal of a small number of seditious persons, but the greatest and most judicious part of the subjects of all orders in the kingdom. The tyranny, as we have also observed, must be notorious, and accompanied with the highest evidence.

XXX. We may likewise affirm, that, strictly speaking, the subjects are not obliged to wait till the prince has entirely rivetted their chains, and till he has put it out of their power to resist him. It is high time to think of their safety, and to take proper measures against their sovereign, when they find, that all his actions manifestly tend to oppress them, and that he is marching boldly on to the ruin of the state.

XXXI. These are truths of the last importance. It is highly proper they should be known, not only for the safety and happiness of nations, but also for the advantage of good and wise kings.

XXXII. They, who are well acquainted with the frailty of human nature, are always diffident of themselves; and, wishing only to discharge their duty, are contented to have bounds set to their authority, and by such means to be hindered from doing what they ought to avoid. Taught by reason and experience, that the people love peace and good government, they will never be afraid of a general insurrection, so long as they take care to govern with moderation, and hinder their officers from committing injustice.

* Grotius on the Right of War and Peace, book i. chap. iv. § 8.

XXXIII. However the abettors of despotic power and passive obedience start several difficulties on this subject.

First Objection. A revolt against the supreme power includes a contradiction ; for if this power is supreme, there is none superior to it. By whom then shall it be judged ? If the sovereignty still inheres in the people, they have not transferred their right ; and if they have transferred it they are no longer masters of it.

Answer. This difficulty supposes the point in question, namely, that the people have divested themselves so far of their liberty, that they have given full power to the sovereign to treat them as he pleases, without having in any case reserved to themselves the power of resisting him. This is what no people ever did, nor ever could do. There is therefore no contradiction in the present case. A power, given for a certain end, is limitted by that very end. The supreme power acknowledges none above itself, so long as the sovereign has not forfeited his dignity. But if he has degenerated into a tyrant, he can no longer claim a right, which he has forfeited by his own misconduct.

XXXIV. *Second Objection.* But who shall judge whether the prince performs his duty, or whether he governs tyrannically ? Can the people be judges in their own cause ?

Answer. It certainly belongs to those, who have given any person a power, which he had not of himself, to judge whether he uses it agreeably to the end, for which it was conferred on him.

XXXV. *Third Objection.* We cannot without imprudence grant this right of judging to the people. Political affairs are not adapted to the capacity of the vulgar, but are sometimes of so delicate a nature, that even persons of the best sense cannot form a right judgment of them.

Answer. In dubious cases, the presumption ought ever to be in favor of the sovereign, and obedience is the duty of subjects. They ought ever to bear a moderate abuse of sovereignty. But in cases of manifest tyranny, every one is in a condition to judge, whether he is highly injured or not.

XXXVI. *Fourth objection.* But do we not expose the state to perpetual revolutions, to anarchy, and to certain ruin, by making the supreme authority depend on the opinion of the people, and by granting them liberty to rise on particular occasions against their sovereign ?

Answer. This objection would be of some force, if we pretended, that the people had a right to oppose their sovereign, or to change the form of government, through levity or caprice, or even for a moderate abuse of the supreme power. But no inconvenience will ensue, while the subjects only use this right with all the precautions, and in the circumstances above supposed. Besides experience teaches us, that it is very difficult to prevail on a nation to change a government, to which they have been accustomed. We are apt to overlook not only slight, but even very considerable mistakes in our governors.

XXXVII. Our hypothesis does not tend more than any other, to excite disturbances in a state ; for a people, oppressed by a tyrannical government, will rebel as frequently, as those, who live under established laws. Let the abettors of despotic power cry up their prince as much, as they please, let them say the most magnificent things of his sacred person, yet the people, reduced to the last misery, will trample those specious reasons under foot, as soon as they can do it with an appearance of success.

XXXVIII. In fine, though the subjects might abuse the liberty, which we grant them, yet less inconvenience would arise from this, than from allowing all to the sovereign, so as to let a whole nation perish, rather than grant it the power of checking the iniquity of its governors.

CHAP. VIII.

Of the duty of sovereigns.

I. THERE is a sort of commerce, or reciprocal return of the duties of the subjects to the sovereign, and of his to them. Having treated of the former, it remains that we take a view of the latter.

II. From what has been hitherto explained concerning the

nature of sovereignty, its end, extent, and boundaries, the duty of sovereigns may easily be gathered. But since this is an affair of the last importance, it is necessary to say something more particular on it, and to collect the principal heads of it as it were into one view.

III. The higher a sovereign is raised above the level of other men, the more important are his duties; if he can do a great deal of good, he can also do a great deal of mischief. It is on the good or evil conduct of princes, that the happiness or misery of a whole nation or people depends. How happy is the situation, which, on all instances, furnishes occasions of doing good to so many thousands! but at the same time how dangerous is the post, which exposes every moment to the injuring of millions; besides the good, which princes do, sometimes extends to the most remote ages; as the evils they commit are multiplied to latest posterity. This sufficiently discovers the importance of their duties.

IV. In order to have a proper knowledge of the duty of sovereigns, we need only attentively consider the nature and end of civil societies, and the exercise of the different parts of sovereignty.

V. 1. The first general duty of princes is carefully to inform themselves of every thing, that falls under the complete discharge of their trust; for a person cannot well acquit himself in that, which he has not first rightly learnt.

VI. It is a great mistake to imagine, that the knowledge of government is an easy affair; on the contrary nothing is more difficult, if princes would discharge their duty. Whatever talents or genius they may have received from nature, this is an employment, that requires the whole man. The general rules of governing well are few in number; but the difficulty is to make a just application of them to times and circumstances; and this demands the greatest efforts of diligence and human prudence.

VII. 2. When a prince is once convinced of the obligation he is under to inform himself exactly of all, that is necessary for the discharge of his trust, and of the difficulty of getting this information, he will begin with removing every obstacle,

which may oppose it. At first it is absolutely necessary, that princes should retrench their pleasures and useless diversions, so far as these may be a hindrance to the knowledge and practice of their duty. Then they ought to endeavour to have wise, prudent, and experienced persons about them; and on the contrary to remove flatterers, buffoons, and others, whose whole merit consists in things, that are frivolous and unworthy the attention of a sovereign. Princes ought not to choose for favorites those, who are most proper to divert them, but such as are most capable of governing the state.

VIII. Above all things, they cannot guard too much against flattery. No human condition has so great an occasion for true and faithful advice, as that of kings. And yet princes, corrupted by flattery, take every thing, that is free and ingenuous, to be harsh and austere. They are become so delicate, that every thing, which is not an adulation, offends them. But nothing ought they to be so greatly afraid of, as this very adulation; since there are no miseries, into which they may not be hurried by its poisonous insinuation. On the contrary, the prince is happy, even if he has but a single subject, who is so generous as to speak the truth to him; such a man is the treasure of the state. Prudent sovereigns, who have their true interests at heart, ought continually to imagine, that court sycophants only regard themselves, and not their master; whereas a sincere counsellor, as it were, forgets himself, and thinks only on the advantage of his master.

IX. 3. Princes ought to use all possible application to understand the constitution of the state, and the natural temper of their subjects. They ought not in this respect to be contented with a general and superficial knowledge. They should enter into particulars, and carefully examine into the constitution of the state, into its establishment and power, whether it be old or of late date, successive or elective, acquired by legal methods or by arms; they should also see how far this jurisdiction reaches, what neighbours are about them, what allies, and what strength, and what conveniences the state is provided with. For according to these considerations the scepter must be swayed, and the rider must take care to keep a stiffer or slacker rein.

X. 4. Sovereigns ought also to endeavour to excel in such virtues, as are most necessary to support the weight of so important a charge, and to regulate their outward behaviour in a manner worthy of their rank and dignity.

XI. We have already shown, that virtue in general consists in that strength of mind, which enables us not only to consult right reason on all occasions, but also to follow her counsels with ease, and effectually to resist every thing capable of giving us a contrary bias. This single idea of virtue is sufficient to show how necessary it is to all men. But none have more duties to fulfil, none are more exposed to temptation, than sovereigns; and none of course have a greater necessity for the assistance of virtue. Besides, virtue in princes has this advantage, that it is the surest method of inspiring their subjects with the like principles. For this purpose they need only show the way. The example of the prince has a greater force than the law. It is as it were a living law, of more efficacy than precept. But to descend to particulars.

XII. The virtues most necessary to sovereigns are, 1. *Piety*, which is certainly the foundation of all other virtues; but it must be a solid and rational piety, free from superstition and bigotry. In the high situation of sovereigns, the only motive, which can most surely induce them to the discharge of their duty, is the fear of God. Without that they will soon run into every vice, which their passions dictate; and the people will become the innocent victims of their pride, ambition, avarice, and cruelty. On the contrary, we may expect every thing, that is good, from a prince, who fears and respects God, as a supreme Being, on whom he depends, and to whom he must one day give an account of his administration. Nothing can be so powerful a motive as this to engage princes to perform their duty, nothing can so well cure them of that dangerous mistake, that, being above other men, they may act as absolute lords, as if they were not to render an accouut of their conduct, and be judged in their turn, after having passed sentence on others.

XIII. 2. The love of *Equity* and *Justice*. The principal end a prince was made for is to take care, that every one should have his right. This ought to engage him to study not only

the science of those great civilians, who ascend to the first principles of law, which regulate human society, and are the basis as it were of government and politics; but also that part of the law, which descends to the affairs of particular persons. This branch is generally left for the gentlemen of the long robe, and not admitted into the education of princes, though they are every day to pass judgment upon the fortunes, liberties, lives, honor, and reputation of their subjects. Princes are continually talked to of valour and liberality; but if justice do not regulate these two qualities, they degenerate into the most odious vices. Without justice valour does nothing but destroy; and liberality is only a foolish profuseness. Justice keeps all in order, and contains within bounds him, who distributes it, as well as those, to whom it is distributed.

XIV. 3. *Valour*. But it must be set in motion by justice, and conducted by prudence. A prince should expose his person to the greatest perils, as often as it is necessary. He dishonors himself more by being afraid of danger in time of war, than by never taking the field. The courage of him, who commands others, ought not to be dubious; but neither ought he to run headlong into danger. Valour can no longer be a virtue, than it is guided by prudence; without this it is a stupid contempt of life, and a brutal ardor. Inconsiderate valour is always insecure. He, who is not master of himself in dangers, is rather fierce than brave; if he does not fly, he is at least confounded He loses that presence of mind, which would be necessary for him to give proper orders, to take advantage of opportunities, and to rout the enemy. The true way of finding glory is calmly to wait for the favorable occasion. Virtue is the more revered, as she shows herself plain, modest, and averse to pride and ostentation. In proportion as the necessity of exposing yourself to danger augments, your foresight and courage ought also to increase.

XV. 4. Another virtue, very necessary in princes, is to be extremely reserved in discovering their thoughts and designs. This is evidently necessary to those, who are concerned in government. It includes a wise diffidence, and an innocent dissimulation.

XVI. 5. A prince must, above all things, accustom himself to moderate his desires. For as he has the power of gratifying them, if he once gives way to them, he will run to the greatest excess, and, by destroying his subjects, will at last complete his own ruin. In order to form himself to this moderation, nothing is more proper, than to accustom himself to patience.

This is the most necessary of all virtues for those, who are to command. A man must be patient to become master of himself and others. Impatience, which seems to be a vigorous exertion of the soul, is only a weakness and inability of suffering pain. He, who cannot wait and suffer, is like a person, who cannot keep a secret. Both want resolution to contain themselves. The more power an impatient man has, the more fatal his impatience will be to him. He will not wait; he gives himself no time to judge; he forces every thing to please himself: he tears off the boughs, to gather the fruit, before it is ripe; he breaks down the gates, rather than stay till they are opened to him.

XVII. 6. *Goodness* and *Clemency* are also virtues very necessary to a prince. His office is to do good, and it is for this end the supreme power is lodged in his hands. It is also principally by this, that he ought to distinguish himself.

XVIII. 7. *Liberality*, well understood and well applied, is so much the more essential to a prince, as avarice is a disgrace to a person, whom it costs almost nothing to be liberal. To take it exactly, a king, as a king, has nothing properly his own; for he owes his very self to others. But, on the other hand, no person ought to be more careful in regulating the exercise of this noble virtue. It requires great circumspection, and supposes, in the prince, a just discernment and a good taste to know how to bestow and dispense favors on proper persons. He ought, above all things, to use this virtue for rewarding merit and virtue.

XIX. But liberality has its bounds, even in the most opulent princes. The state may be compared to a family. The want of foresight, profusion of treasure, and the voluptuous inclination of princes, who are masters of it, do more mischief, than the most skilful ministers can repair.

XX. To reimburse his treasures, squandered away without necessity, and often in criminal excesses, he must have recourse to expedients, which are fatal to the subjects and the state. He loses the hearts of the people, and causes murmurs and discontents, which are ever dangerous, and of which an enemy may take advantage. These are inconveniences, that even common sense might point out, if the strong propensity to pleasure, and the intoxication of power, did not often extinguish the light of reason in princes. To what cruelty and injustice did not the extravagant profusions of Nero carry him? A prudent economy, on the contrary, supplies the deficiencies of the revenue, maintains families and states, and preserves them in a flourishing condition. By economy princes not only have money in time of need, but also possess the hearts of their subjects, who freely open their purses upon any unforeseen emergency, when they see that the prince has been sparing in his expenses; the contrary happens when he has squandered away his treasures.

XXI. This is a general idea of the virtues most necessary to a sovereign, besides those, which are common to him with private people, and of which some are included even in those, we have been mentioning. Cicero follows almost the same ideas in the enumeration he makes of the royal virtues.*

XXII. It is by the assistance of these virtues, of which we here have given an idea, that sovereigns are enabled to apply themselves with success to the functions of government, and to fulfil the different duties of it. Let us say something more particular on the actual exercise of those duties.

XXIII. There is a general rule, which includes all the duties of a sovereign, and by which he may easily judge how to proceed under every circumstance. *Let the safety of the people be the supreme law.* This ought to be the chief end of all his actions. The supreme authority has been conferred upon him with this view; and the fulfilling of it is the foundation of his right and power. The prince is properly the servant of the public. He ought as it were to forget himself, in order to

* Fortem, justum, severum, gravem, magnanimum, largum, beneficum, liberalem dici, hæ sunt regiæ laudes. *Orat. pro rege Dejotaro, cap. 9.*

think only on the advantage and good of those, whom he governs. He ought not to look upon any thing as useful to himself, which is not so to the state. This was the idea of the heathen philosophers. They defined a good prince one, who endeavours to render his subjects happy; and a tyrant, on the contrary, one, who aims only at his own private advantage.

XXIV. The very interest of the sovereign demands, that he should direct all his actions to the public good. By such a conduct he wins the hearts of his subjects, and lays the foundation of solid happiness and true glory.

XXV. Where the government is most despotic, there sovereigns are least powerful. They ruin every thing, and are the sole possessors of the whole country; but then the state languishes, because it is exhausted of men and money; and this first loss is the greatest and most irreparable. His subjects seem to adore him, and to tremble at his very looks. But see what will be the consequence upon the least revolution; then we find, that this monstrous power, pushed to excess, cannot long endure, because it has no resource in the hearts of the people. On the first blow, the idol tumbles down, and is trampled under foot. The king, who, in his prosperity, found not a man, who durst tell him the truth, shall not find one in his adversity, that will vouchsafe either to excuse, or defend him against his enemies. It is therefore equally essential to the happiness of the people and of sovereigns, that the latter should follow no other rule in the manner of governing, than that of the public welfare.

XXVI. It is not difficult, from this general rule, to deduce those of a more particular nature. The functions of the government relate either to the domestic interests of the state, or to its foreign concerns.

XXVII. As for the domestic interests of the state, the first care of the sovereign ought to be, 1. to form his subjects to good manners. For this purpose the duty of supreme rulers is, not only to prescribe good laws, by which every one may know how he ought to behave, in order to promote the public good; but especially to establish the most perfect manner of public instruction, and of the education of youth. This is the only method of making the subjects conform to the laws both by reason and custom, rather than through fear of punishment.

XXVIII. The first care of a prince therefore ought to be to erect public schools for the education of children, and for training them betimes to wisdom and virtue. Children are the hope and strength of a nation. It is too late to correct them when they are spoiled. It is infinitely better to prevent the evil, than to be obliged to punish it. The king, who is the father of all his people, is more particularly the father of all the youth, who are as it were the flower of the whole nation. And as it is in the flower, that fruits are prepared, so it is one of the principal duties of the sovereign to take care of the education of youth, and the instruction of his subjects, to plant the principles of virtue early in their minds, and to maintain and confirm them in that happy disposition. It is not laws and ordinances, but good morals, that properly regulate the state.

Quid leges sine moribus
Vanæ proficiunt?

Hor. lib. iii. Od. 24. *v.* 35, 36.

And what are laws unless obey'd
By the same moral virtues they were made? *Francis.*

Those, who have had a bad education, make no scruple to violate the best political institutions; whereas they, who have been properly trained up, cheerfully conform to all good institutions. In fine, nothing is more conducive to so good an end in states, than to inspire the people in the earlier part of life with the principles of the Christian religion, purged from all human invention. For this religion includes the most perfect scheme of morality, the maxims of which are extremely well adapted for promoting the happiness of society.

XXIX. 2. The sovereign ought to establish good laws for the settling of such affairs, as the subjects have most frequent occasion to transact with each other. These laws ought to be just, equitable, clear, without ambiguity and contradiction, useful, accommodated to the condition and the genius of the people, at least so far, as the good of the state will permit, that, by their

means, differences may be easily determined. But they are not to be multiplied without necessity.

XXX. I said, that laws ought to be *accommodated to the condition and genius of the people*; and for this reason I have before observed, that the sovereign ought to be thoroughly instructed in this article; otherwise one of these two inconveniences must happen, either that the laws are not observed, and then it becomes necessary to punish an infinite number of people, while the state reaps no advantage from it; or that the authority of the laws is despised, and then the state is on the brink of destruction.

XXXI. I mentioned also, that *laws ought not to be multiplied without necessity*; for this would only tend to lay snares for the subject, and expose him to inevitable punishments, without any advantage to the society. In fine it is of great importance to regulate what relates to the administration and ordinary forms of justice, so that every subject may have it in his power to recover his right, without losing much time, or being at a great expense.

XXXII. 3. It would be of no use to make good laws, if people were suffered to violate them with impunity. Sovereigns ought therefore to see them properly executed, and to punish the delinquents without exception of persons, according to the quality and degree of the offence. It is even sometimes proper to punish severely at first. There are circumstances, in which it is clemency to make such early examples, as shall stop the course of iniquity. But what is chiefly necessary, and what justice and the public good absolutely require, is, that the severity of the laws be exercised not only upon the subjects of moderate fortune and condition, but also upon the wealthy and powerful. It would be unjust, that reputation, nobility, and riches, should authorise any one to insult those, who are destitute of these advantages. The populace are often reduced by oppression to despair, and their fury at last throws the state into convulsions.

XXXIII. 4. Since men first joined in civil societies to screen themselves from the injuries and malice of others, and to procure all the sweets and pleasures, which can render life

commodious and happy; the sovereign is obliged to hinder the subjects from wronging each other, to maintain order and peace in the community by a strict execution of the laws, to the end, that his subjects may obtain the advantages, which mankind can reasonably propose to themselves by joining in society. When the subjects are not kept within rule, their perpetual intercourse easily furnishes them with opportunities of injuring one another. But nothing is more contrary to the nature and end of civil government, than to permit subjects to do themselves justice, and, by their own private force, to revenge the injuries they think they have suffered. We shall here add a beautiful passage from Mr. de la Bruiere upon this subject.*

"What would it avail me, or any of my fellow subjects, that "my sovereign was successful and crowned with glory, that "my country was powerful and the terror of neighbouring "nations, if I were forced to lead a melancholy and miserable "life under the burthen of oppression and indigence? If, "while I was secured from the incursions of a foreign enemy, "I found myself exposed at home to the sword of an assassin, "and was less in danger of being robbed or massacred in the "darkest nights, and in a thick forest, than in the public streets? "If safety, cleanliness, and good order, had not rendered liv-"ing in towns so pleasant, and had not only furnished them "with the necessaries, but moreover with all the sweets and "conveniences of life? If being weak and defenceless, I were "encroached upon in the country, by every neighbouring great "man? If so good a provision had not been made to protect "me against his injustice? If I had not at hand so many, and "such excellent masters, to educate my children in those arts "and sciences, which will one day make their fortune? If the "conveniency of commerce had not made good, substantial stuffs "for my cloathing, and wholesome food for my nourishment, "both plentiful and cheap? If, to conlude, the care of my sov-"ereign had not given me reason to be as well contented with "my fortune, as his princely virtues must needs make him "with his?

XXXIV. 5. Since a prince can neither see nor do every thing himself, he must have the assistance of ministers. But,

* Characters and manners of the present age, chap. x. of the sovereign.

as these derive their whole authority from their master, all the good or evil they do is finally imputed to him. It is therefore the duty of sovereigns to choose persons of integrity and ability for the employments, with which they entrust them. They ought often to examine their conduct, and to punish or recompense them, according to their merits. In fine, they ought never to refuse to lend a patient ear to the humble remonstrances and complaints of their subjects, when they are oppressed and trampled on by ministers and subordinate magistrates.

XXXV. 6. With regard to subsidies and taxes, since the subjects are not obliged to pay them, but as they are necessary to defray the expenses of the state, in war or peace; the sovereign ought to exact no more, than the public necessities, or the signal advantage of the state, shall require. He ought also to see, that the subjects be incommoded as little as possible by the taxes laid upon them. There should be a just proportion in the tax of every individual, and there must be no exception or immunity, which may turn to the disadvantage of others. The money collected ought to be laid out in the necessities of the state, and not wasted in luxury, debauchery, foolish largesses, or vain magnificence. Lastly the expenses ought to be proportioned to the revenue.

XXXVI. 7. It is the duty of a sovereign to draw no further supplies from his subjects, than he really stands in need of. The wealth of the subjects forms the strength of the state, and the advantage of families and individuals. A prince therefore ought to neglect nothing, that can contribute to the preservation and increase of the riches of his people. For this purpose he should see, that they draw all the profit they can from their lands and waters, and keep themselves always employed in some industrious exercise or other. He ought to further and promote the mechanic arts, and give all possible encouragement to commerce. It is likewise his duty to bring his subjects to a frugal method of living by good sumptuary laws, which may forbid superfluous expenses, and especially those, by which the wealth of the natives is translated to foreigners.

XXXVII. 8. Lastly, it is equally the interest and duty of a supreme governor to guard against factions and cabals, whence

seditions and civil wars easily arise. But above all he ought to take care, that none of his subjects place a greater dependance, even under the pretext of religion, or any other power, either within or without the realm, than on his lawful sovereign. This in general is the law of the public good in regard to the domestic interests, or internal tranquillity of the state.

XXXVIII. As to foreign concerns, the principal duties of the king are,

1. To live in peace with his neighbours, as much as he possibly can.

2. To conduct himself with prudence in regard to the alliances and treaties, he makes with other powers.

3. To adhere faithfully to the treaties he has made.

4. Not to suffer the courage of his subjects to be enervated, but, on the contrary, to maintain and augment it by good discipline.

5. In due and seasonable time to make the preparations necessary to put himself in a posture of defence.

6. Not to undertake any unjust or rash war.

7. Lastly, even in times of peace to be very attentive to the designs and motions of his neighbours.

XXXIX. We shall say no more of the duties of sovereigns. It is sufficient at present to have pointed out the general principles, and collected the chief heads. What we have to say hereafter, concerning the different parts of sovereignty, will give the reader a more distinct idea of the particular duties attending it.

END OF THE SECOND PART.

THE

PRINCIPLES

OF

POLITIC LAW.

PART III.

A more particular examination of the essential parts of sovereignty, or of the different rights of the sovereign, with respect to the internal administration of the state, such as the legislative power, the supreme power in matters of religion, the right of inflicting punishments, and that, which the sovereign has over the Bona Reipublicæ, *or the goods contained in the commonwealth.*

CHAP. I.

Of the legislative power, and the civil laws, which arise from it.

I. WE have hitherto explained what relates to the nature of civil society in general, of government, and of sovereignty, which is the soul of it. Nothing remains to compleat the plan we laid down, but more particularly to examine the different parts of sovereignty, as well those, which directly regard the internal administration of the state, as those, which relate to its interests abroad, or to its concerns with foreign powers, which will afford us an opportunity of explaining the principal questions relating to those subjects; and to this purpose we design this and the subsequent part.

II. Among the essential parts of sovereignty, we have given the first rank to the *legislative power*, that is to say, the right,

which the sovereign has of giving laws to his subjects, and of directing their actions, or of prescribing the manner, in which they ought to regulate their conduct; and it is from this the civil laws are derived. As this right of the sovereign is as it were the essence of sovereignty, order requires that we should begin with the explication of whatever relates to it.

III. We shall not here repeat what we have elsewhere said of the nature of laws in general; but supposing the principles we have established on that head, we shall only examine the nature and extent of the legislative power in society, and that of the civil laws and decrees of the sovereign thence derived.

IV. *Civil laws* then are all those ordinances, by which the sovereign binds his subjects. The assemblage or body of those ordinances is what we call the *Civil Law.* In fine civil jurisprudence is that science or art, by which the civil laws are not only established, but explained in case of obscurity, and are properly applied to human actions.

V. The establishment of civil society ought to be fixed so, as to make a sure and undoubted provision for the happiness and tranquillity of man. For this purpose it was necessary to establish a constant order, and this could only be done by fixed and determinate laws.

VI. We have already observed, that it was necessary to take proper measures to render the laws of nature as effectual, as they ought to be, in order to promote the happiness of society; and this is effected by means of the civil laws.

For, 1. They serve to make the laws of nature better known.

2. They give them a new degree of force, and render the observance of them more secure, by means of their sanction, and of the punishments, which the sovereign inflicts on those, who despise and violate them.

3. There are several things, which the law of nature prescribes only in a general and indeterminate manner; so that the time, the manner, and the application to persons, are left to the prudence and discretion of every individual. It was however necessary, for the order and tranquillity of the state, that all this matter should be regulated; which is done by the civil laws.

4. They also serve to explain any obscurity, that may arise in the maxims of the law of nature.

5. They qualify or restrain, in various ways, the use of those rights, which every man naturally possesses.

6. Lastly they determine the forms, that are to be observed, and the precautions, which ought to be taken, to render the different engagements, that people enter into with each other, effectual and inviolable; and they ascertain the manner, in which a man is to prosecute his rights in the civil court.

VII. In order therefore to form a just idea of the civil laws, we must say, that, as civil society is no other, than natural society itself, qualified or restrained by the establishment of a sovereign, whose business it is to maintain peace and order; in like manner the civil laws are those of nature, perfected in a manner suitable to the state and advantages of society.

VIII. As this is the case, we may very properly distinguish two sorts of civil laws. Some are such with respect to their authority only, and others with regard to their original. To the former class we refer all the natural laws, which serve as rules in civil courts, and which are also confirmed by a new sanction of the sovereign. Such are all laws, which determine the crimes, that are to be punished by the civil justice; and the obligations, upon which an action may commence in the civil court, &c.

As to the civil laws, so called because of their original, these are arbitrary decrees, which, for their foundation, have only the will of the sovereign, and suppose certain human establishments; or which regulate things relating to the particular advantage of the state, though indifferent in themselves and undetermined by the law of nature. Such are the laws, which prescribe the necessary forms in contracts and testaments, the manner of proceeding in courts of justice, &c. But it must be observed, that all those regulations should tend to the good of the state, as well as of individuals; so that they are properly appendages to the law of nature.

IX. It is of great importance carefully to distinguish, in the civil laws, what is natural and essential in them, from what is only adventitious. Those laws of nature, the observance of which is essentially conducive to the peace and tranquillity of

mankind, ought certainly to have the force of law in all states; neither is it in the power of the prince to abrogate them. As to the others, which do not so essentially interest the happiness of society, it is not always expedient to give them the force of law, because the controversies about the violation of them would often be very perplexed and intricate, and likewise lay a foundation for an infinite number of litigious suits. Besides, it was proper to give the good and virtuous an opportunity of distinguishing themselves by the practice of those duties, the violation of which incurs no human penalties.

X. What we have said of the nature of civil laws sufficiently shows, that though the legislative be a *supreme*, yet it is not an *arbitrary* power; but on the contrary, it is limited in several respects.

1. And as the sovereign holds the legislative power originally of the will of each member of the society, it is evident, that no man can confer on another a right, which he has not himself; and consequently the legislative power cannot be extended beyond this limit. The sovereign therefore can neither command nor forbid ony other actions, than such as are either voluntary or possible.

2. Besides, the natural laws dispose of human actions antecedently to the civil laws, and men cannot recede from the authority of the former. Therefore as those primitive laws limit the power of the sovereign, he can determine nothing so as to bind the subject, contrary to what they either expressly command or forbid.

XI. But we must be careful not to confound two things entirely distinct, I mean the *State of Nature* and the *Laws of Nature*. The primitive and natural state of man may admit of different changes and modifications, which are left to the disposal of man, and have nothing contrary to his obligation and duties. In this respect, the civil laws may produce a few changes in the natural state, and consequently make some regulations, unknown to the law of nature, without containing any thing contrary to that law, which supposes the state of liberty in its full extent, but nevertheless permits mankind to limit and

restrain that state, in the manner, which appears most to their advantage.

XII. We are however far from being of the opinion of those writers,* who pretend that it is impossible the civil laws should be repugnant to that of nature, *because*, say they, *there is nothing either just or unjust antecedently to the establishment of those laws*. What we have above advanced, and the principles we have established in the whole course of this work, sufficiently evince the absurdity of this opinion.

XIII. It is as ridiculous to assert, that before the establishment of civil laws and society, there was no rule of justice, to which mankind were subject, as to pretend that truth and rectitude depend on the will of man, and not on the nature of things. It would have even been impossible for mankind to found societies of any durability, if, antecedently to those societies, there had been neither justice nor injustice, and if they had not, on the contrary, been persuaded, that it was just to keep their word, and unjust to break it.

XIV. Such in general is the extent of the legislative power, and the nature of the civil laws, by which that power exerts itself. Hence it follows, that the whole force of civil laws consists in two things, namely in their *Justice* and in their *Authority*.

XV. The authority of the laws consists in the force, given them by the person, who, being invested with the legislative power, has a right to enact those laws; and in the Divine Will, which commands us to obey him. With regard to the justice of civil laws, it depends on their relation to the good order of society, of which they are the rule, and on the particular advantage of establishing them according as different conjunctures may require.

XVI. And since the sovereignty, or right of commanding, is naturally founded on a *beneficient Power*, it necessarily follows that the *Authority* and *Justice* of laws are two characteristics essential to their nature, in default of which they can produce no real obligation. The power of the sovereign constitutes the

* Hobbes.

authority of his laws, and his beneficience permits him to make none, but such as are conformable to equity.

XVII. However certain and incontestable these general principles may be, yet we ought to take care not to abuse them in the application. It is certainly essential to every law, that, it be equitable and just; but we must not thence conclude, that private subjects have a right to refuse obedience to the commands of the sovereign, under a pretence, that they do not think them altogether just. For, besides that some allowance is to be made for human infirmity, the opposing the legislative power, which constitutes the whole safety of the public, must evidently tend to the subversion of society; and subjects are obliged to suffer the inconveniences, which may arise from some unjust laws, rather than expose the state to ruin by their disobedience.

XVIII. But if the abuse of the ligislative power proceeds to excess, and to the subversion of the fundamental principles of the laws of nature, and of the duties, which it enjoins, it is certain that, under such circumstances, the subjects are, by the laws of God, not only authorized, but even obliged to refuse obedience to all laws of this kind.

XIX. But this is not sufficient. That the laws may be able to impose a real obligation, and reckoned just and equitable, it is necessary the subjects should have a perfect knowledge of them; now they cannot of themselves know the civil laws, at least those of an arbitrary nature; these are in some measure facts of which the people may be ignorant. The sovereign ought therefore to declare his will, and to administer laws and justice, not by arbitrary and hasty decrees, but by mature regulations, duly promulgated.

XX. These principles furnish us with a reflection of great importance to sovereigns. Since the first quality of laws is, that they be known, sovereigns ought to publish them in the clearest manner. In particular it is absolutely necessary, that the laws be written in the language of the country; nay, it is proper that public professors should not use a foreign language in their lectures on jurisprudence. For what can be more repugnant to the principle, which directs, that the laws should be

perfectly known, than to make use of laws, written in a dead language, which the generality of the people do not understand, and to render the knowledge of those laws attainable only in that language? I cannot help saying, that this is an absurd practice, equally contrary to the glory of sovereigns, and to the advantage of subjects.

XXI. If we therefore suppose the civil laws to be accompanied with conditions abovementioned, they have certainly the force of obliging the subjects to observe them. Every individual is bound to submit to their regulations so long, as they include nothing contrary to the divine law, whether natural or revealed; and this not only from a dread of the punishments annexed to the violation of them, but also from a principle of conscience, and in consequence of a maxim of natural law, which commands us to obey our lawful sovereign.

XXII In order rightly to comprehend this effect of the civil laws, it is to be observed, that the obligation, which they impose, extends not only to external actions, but also to the inward sentiments. The sovereign, by prescribing laws to his subjects, proposes to render them wise and virtuous. If he commands a good action, he is willing it should be done from principle; and when he forbids a crime, he not only prohibits the external action, but also the design or intention.

XXIII. In fact man, being a free agent, is induced to act only in consequence of his judgment, by a determination of his will. As this is the case, the most effectual mean, which the sovereign can employ to procure the public happiness and tranquillity, is to work upon the mind, by disposing the hearts of his subjects to wisdom and virtue.

XXIV. Hence it is, that public establishments are formed for the education of youth. Academies and professors are appointed for this purpose. The end of these institutions is to inform and instruct mankind, and to make them early acquainted with the rules of a happy and virtuous life. Thus the sovereign, by means of instruction, has an effectual method of instilling just ideas and notions into the minds of his subjects; and by these means his authority has a very great influence upon the internal actions, the thoughts, and inclinations of those,

who are subjected to the direction of his laws, so far at least, as the nature of the thing will permit.

XXV. We shall close this chapter with the discussion of a question, which naturally presents itself in this place.

Some ask whether a subject can innocently execute the unjust commands of a sovereign, or if he ought not rather to refuse absolutely to obey him, even at the hazard of his life? Puffendorf seems to answer this question with a kind of hesitation, but at length he declares for the opinion of Hobbes in the following manner. We must distinguish, says he, whether the sovereign commands us in our own name to do an unjust action, which may be accounted our own; or whether he orders us to perform it in his name, as instruments in the execution of it, and as an action which he accounts his own. In the latter case, he pretends, that we may without scruple execute the action, ordered by the sovereign, who is then to be considered as the only author of it. Thus, for example, soldiers ought to execute the orders of their prince, because they do not act in their own name, but as instruments and in the name of their master. But, on the contrary, it is never lawful to do in our name an action, that our conscience tells us is unjust or criminal. Thus for instance a judge, whatever orders he may have from the prince, ought never to condemn an innocent person, nor a witness depose against the truth.

XXVI. But, in my opinion, this distinction does not remove the difficulty; for in whatever manner we pretend that a subject acts in those cases, whether in his own name, or in that of his prince, his will concurs in some manner or other to the unjust and criminal action, which he executes by order of the sovereign. We must therefore impute either both actions partly to him, or else neither in any degree.

XXVII. The surest way then is to distinguish between a case, where the prince commands a thing evidently unjust, and where the matter is doubtful. As to the former, we must generally, and without any restriction, maintain, that the greatest menaces ought never to induce us, even by the order and in the name of the sovereign, to do a thing, which appears to us evidently unjust and criminal; and though we may be very

excusable in the sight of man for having been overcome by such a severe trial, yet we shall not be so before the Divine tribunal.

XXVIII. Th us a parliament, for instance, commanded by the prince to register an edict manifestly unjust, ought certainly to refuse it. The same I say of a minister of state, whom a prince would oblige to execute a tyrannical or iniquitious order; of an ambassador, whose master gives him instructions contrary to honor and justice; or of an officer, whom the sovereign should command to kill a person, whose innocence is as clear as noonday. In those cases we should nobly exert our courage, and with all our might resist injustice, even at the peril of our lives. *It is better to obey God than man.* For in promising obedience to the sovereign, we could never do it but on condition, that he should not order any thing manifestly contrary to the laws of God, whether natural or revealed. To this purpose there is a beautiful passage in a tragedy written by Sophocles. "I did "not believe," says Antigone to Creon king of Thebes, "that "the edicts of a mortal man, as you are, could be of such force, "as to supersede the laws of the gods themselves, laws not writ- "ten indeed, but certain and immutable; for they are not of yes- "terday or today, but established perpetually and forever, and "no one knows when they began. I ought not therefore, for "fear of any man, to expose myself, by violating them, to the "punishment of the gods."*

XXIX. But, in cases where the matter is doubtful, the best resolution is certainly to obey. The duty of obedience, being a clear obligation, ought to supersede all doubt. Otherwise, if the obligation of the subjects to comply with the commands of their sovereign permitted them to suspend their obedience, till they were convinced of the justice of his commands; this would manifestly annihilate the authority of the prince, and subvert all order and government. It would be necessary, that soldiers, executioners, ond other inferior officers of court, should understand politics and the civil law, otherwise they might excuse themselves from their duty of obedience, under the pretence, that they are not sufficiently convinced of the justice of

* Sophocl. Antigon. ver. 473, &c.

the orders given them; and this would render the prince incapable of exercising the functions of government. It is therefore the duty of the subject to obey in those circumstances; and if the action be unjust in itself, it cannot be imputed to him, but the whole blame falls on the sovereign.

XXX. Let us here collect the principal views, which the sovereign ought to have in the enacting of laws.

1. He should pay a regard to those primitive rules of justice, which God himself has established, and take care, that his laws be perfectly conformable to those of the Deity.

2. The laws should be of such a nature, as to be easily followed and observed. Laws, too difficult to be put in execution, are apt to shake the authority of the magistrate, or to lay a foundation for insurrections.

3. No laws ought to be made in regard to useless and unnecessary things.

4. The laws ought to be such, that the subjects may be inclined to observe them rather of their own accord, than through necessity. For this reason the sovereign should only make such laws, as are evidently useful; or at least he should explain and make known to the subjects the reason and motives, that have induced him to enact them.

5. He ought not to be easily persuaded to change the established laws. Frequent changes in the laws certainly lessens their authority, as well as that of the sovereign.

6. The prince ought not to grant dispensations without very good reason; otherwise he weakens the laws, and lays a foundation for jealousies, which are ever prejudicial to the state and to individuals.

7. Laws should be so contrived, as to be assisting to each other, that is to say, some should be preparatory to the observance of others, in order to facilitate their execution. Thus, for example, the sumptuary laws, which prescribe bounds to the expences of the subject, contribute greatly to the execution of those ordinances, which impose taxes and public contributions.

8. A prince, who would make new laws, ought to be particularly attentive to time and conjunctures.

On this principally depends the success of a new law, and the manner, in which it is received.

9. In fine, the most effectual step a sovereign can take to enforce his laws is to conform to them himself, and to show the first example, as we have before observed.

CHAP. II.

Of the right of judging the doctrines, taught in the state; of the care which the sovereign ought to take to form the manners of his subjects.

I. IN the enumeration of the essential parts of sovereignty, we have comprehended the right of judging of the doctrines, taught in the state, and particularly of every thing relating to religion. This is one of the most considerable prerogatives of the sovereign, which it behoves him to exert according to the rules of justice and prudence. Let us endeavour to show the necessity of this prerogative, to establish its foundations, and to point out its extent and boundaries.

II. The first duty of the sovereign ought to be to take all possible pains to form the hearts and minds of his people. In vain would it be for him to enact the best laws, and to prescribe rules of conduct in every thing relative to the good of society, if he did not moreover take proper measures to convince his people of the justice and necessity of those rules, and of the advantages naturally arising from the strict observance of them.

III. And indeed since the principle of all human actions is the will, and the acts of the will, depend on the ideas we form of good and evil, as well as of the rewards and punishments, which must follow those acts, so that every one is determined by his own judgment; it is evident, that the sovereign ought to take care, that his subjects be properly instructed from their infancy, in all those principles, which can form them to an honest and sober life, and in such doctrines, as are agreeable to the end and institution of society. This is the most effectual mean

of inducing men to a ready and sure obedience, and of forming their manners. Without this the laws would not have a sufficient force to restrain the subject within the bounds of his duty. So long as men do not obey the laws from principle, their submission is precarious and uncertain: and they will be ever ready to withdraw their obedience, when they are persuaded they can do it with impunity.

IV. If therefore people's manner of thinking, or the ideas and opinions commonly received, and to which they are accustomed, have so much influence on their conduct, and so strongly contribute either to the good or evil of the state; and if it be the duty of the sovereign to attend to this article, he ought to neglect nothing, that can contribute to the education of youth, to the advancement of the sciences, and to the progress of truth. If this be the case, we must needs grant him a right of judging of the doctrines publicly taught, and of prescribing all those, which may be opposite to the public good and tranquillity.

V. It belongs therefore to the sovereign alone to establish academies and public schools of all kinds, and to authorize the respective professors. It is his business to take care, that nothing be taught in them under any pretext, contrary to the fundamental maxims of natural law, to the principles of religion or good politics; in a word, nothing capable of producing impressions prejudicial to the happiness of the state.

VI. But sovereigns ought to be particularly delicate, as to the manner of using this prerogative, and not to exert it beyond its just bounds, but to use it only according to the rules of justice and prudence, otherwise great abuses will follow. Thus a particular point or article may be misapprehended, as detrimental to the state, while, in the main, it no way prejudices, but rather is advantageous to society; or princes, whether of their own accord, or at the instigation of wicked ministers, may erect inquisitions with respect to the most indifferent and even the truest opinions, especially in matters of religion.

VII. Supreme rulers cannot therefore be too much on their guard, against suffering themselves to be imposed on by wicked men, who under a pretext of public good and tranquillity

seek only their own particular interests, and who use their utmost efforts to render opinions obnoxious, only with a view to ruin men of greater probity than themselves.

VIII. The advancement of the sciences and the progress of truth require, that a reasonable liberty should be granted to all those, who busy themselves in such laudable pursuits, and that we should not condemn a man as a criminal, merely because, on certain subjects, he has ideas different from those commonly received. Besides a diversity of ideas and opinions is so far from obstructing, that it rather facilitates the progress of truth; provided however that sovereigns take proper measures to oblige men of letters to keep within the bounds of moderation, and that just respect, which mankind owe to one another; and that they exert their authority in checking those, who grow too warm in their disputes, and break through all rules of decency, so as to injure, calumniate, and render suspected, every one, that is not in their way of thinking. We must admit, as an indubitable maxim, that truth is of itself very advantageous to mankind, and to society; that no true opinion is contrary to peace and good order; and that all those notions, which, of their nature, are subversive of good order, must certainly be false; otherwise we must assert, that peace and concord are repugnant to the laws of nature.

CHAP. III.

Of the power of the sovereign in matters of religion.

I. THE power of the sovereign, in matters of religion, is of the last importance. Every one knows the disputes, which have long subsisted on this topic between the empire and the priesthood; and how fatal the consequences of it have been to states. Hence it is equally necessary, both to sovereigns and subjects, to form just ideas on this article.

II. My opinion is, that the supreme authority in matters of religion ought necessarily to belong to the sovereign; and the following are my reasons for this assertion.

III. I observe, 1. that if the interest of society requires, that laws should be established *in* relation to human affairs, that is to things, which properly and directly interest only our temporal happiness; this same interest cannot permit, that we should altogether neglect our spiritual concerns, or those, which regard religion, and leave them without any regulation. This has been acknowledged in all ages, and among all nations; and this is the origin of the *civil Law* properly so called, and of the *sacred* or *ecclesiastical Law*. All civilized nations have established these two sorts of law.

IV. But, if matters of religion, have in several respects, need of human regulation, the right of determining them in the last resort can belong only to the sovereign.

First Proof. This is incontestably proved by the very nature of sovereignty, which is no more than the right of determining in the last resort, and consequently admits of no power in the society it governs either superior to, or exempt from its jurisdiction; but embraces, in its full extent, every thing, that can interest the happiness of the state, both *sacred* and *profane*.

V. The nature of sovereignty cannot permit any thing susceptible of human direction, to be withdrawn from its authority; for what is withdrawn from the authority of the sovereign must either be left independent, or subjected to some other person different from the sovereign himself.

VI. Were no rule established in matters of religion, this would be throwing it into a confusion and disorder, quite contrary to the good of society, the nature of religion, and the views of the Deity, who is the author of it. But, if we submit these matters to an authority independent of that of the sovereign, we fall into another inconveniency; since thus we establish, in the same society, two sovereign powers, independent of each other; which is not only incompatible with the nature of sovereignty, but a contradiction in itself.

VII. And indeed, if there were several sovereigns in the same society, they might also give contrary orders. But who does not perceive, that opposite orders, with respect to the same affair, are manifestly repugnant to the nature of things, and cannot have their effect, nor produce a real obligation? How would

it be possible for instance, that a man, who receives different orders at the same time from two superiors, such as to repair to the camp and to go to church, should be obliged to obey both? If it be said, that he is not obliged to comply with both, there must therefore be some subordination of the one to the other, the inferior will yield to the superior, and it will not be true, that they are both sovereign and independent. We may here very properly apply the words of *Christ*. *No man can serve two masters. And a kingdom divided against itself cannot stand.*

VIII. *Second Proof.* I draw my second proof from the end of civil society and sovereignty. The end of sovereignty is certainly the happiness of the people, and the preservation of the state. Now, as religion may several ways either injure or benefit the state, it follows, that the sovereign has a right over religion, at least so far as it can depend on human direction. He, who has a right to the *end*, has undoubtedly a right also to the *means*.

IX. Now, that religion may several ways injure or benefit the state, we have already proved in the first volume of this work.

1. All men have constantly acknowledged that the Deity makes his favours to a state depend principally on the care, which the sovereign takes to induce his subjects to honor and serve him.

2. Religion can of itself contribute greatly to render mankind more obedient to the laws, more attached to their country, and more honest towards one another.

3. The doctrines and ceremonies of religion have a considerable influence on the morals of people, and on the public happiness. The ideas, which mankind imbibed of the Deity, have often misled them to the most preposterous forms of worship, and prompted them to sacrifice human victims. They have even, from those false ideas, drawn arguments in justification of vice, cruelty, and licentiousness; as we may see by reading the ancient poets. Since religion therefore has so much influence over the happiness or misery of society, who can doubt but it is subject to the direction of the sovereign?

X. *Third proof.* What we have been affirming evinces, that it is incumbent on the sovereign to make religion, which includes the most valuable interests of mankind, the principal object of his care and application. He ought to promote the eternal, as well as the present and temporal happiness of his subjects. This is therefore a point properly subject to his jurisdiction.

XI. *Fourth Proof.* In fine we can in general acknowledge only two sovereigns, God and the prince. The sovereignty of God is a transcendent, universal, and absolute supremacy, to which even princes themselves are subject; the sovereignty of the prince holds the second rank, and is subordinate to that of God, but in such a manner, that the prince has a right to regulate every thing, which interests the happiness of society, and by its nature is susceptible of human direction.

XII. After having thus established the right of the sovereign in matters of religion, let us examine into the extent and bounds of this prerogative; whereby it will appear, that these bounds are not different from those, which the sovereignty admits in all other matters. We have already observed, that the power of the sovereign extended to every thing susceptible of human direction. Hence it follows, that the first boundary we ought to fix to the authority of the sovereign, but which indeed is so obvious, as hardly needs mentioning, is, that he can order nothing impossible in its nature, either in religion, or any thing else; as for example to fly into the air, to believe contradictions, &c.

XIII. The second boundary, but which does not more particularly interest religion, than every thing else, is deduced from the divine laws; for it is evident, that, all human authority being subordinate to that of God, whatever the Deity has determined by some law, whether *natural* or *positive*, cannot be changed by the sovereign. This is the foundation of that maxim, *It is better to obey God than man.*

XIV. It is in consequence of these principles, that no human authority can for example, forbid the preaching of the gospel, or the use of the sacraments, nor establish a new article of faith, nor introduce a new worship; for God having given us a rule of religion, and forbidden us to alter this rule, it is not in the power of man to do it; and it would be absurd to imagine,

that any person whatever can either believe or practice a thing as conducive to his salvation, in opposition to the divine declaration.

XV. It is also on the footing of the limitations here established that the sovereign cannot lawfully assume to himself an empire over consciences, as if it were in his power to impose the necessity of believing such or such an article in matters of religion. Nature itself and the divine laws are equally contrary to this pretension. It is therefore no less absurd than impious to endeavour to constrain consciences, and to propagate religion by force of arms. The natural punishment of those, who are in an error, is to be taught.* As for the rest, we must leave the care of the success to God.

XVI. The authority of the sovereign, in matters of religion, cannot therefore extend beyond the bounds we have assigned to it; but these are the only bounds, neither do I amagine it possible to think of any others. But what is principally to be observed is, that these limits of the sovereign power, in matters of religion, are not different from those, he ought to acknowledge in every other matter; on the contrary, they are precisely the same; and equally agree with all the parts of the sovereignty, being no less applicable to common subjects than to those of religion. For example, it would be no more lawful for a father to neglect the education of his children, though the prince should order him to neglect it, than it would be for pastors or Christians to abandon the service of God, even if they had been commanded so to do by an impious sovereign. The reason of this is, because the law of God prohibits both, and this law is superior to all human authority.

XVII. However, though the power of the sovereign, in matters of religion, cannot change what God has determined, we may affirm, that those very things are, in some measure, submitted to the authority of the sovereign. Thus for example the prince has certainly a right to remove the external obstacles, which may prevent the observance of the laws of God, and to make such an observance easy. This is even one of his principal duties. Hence also arises his prerogative of regulating the

* Errantis pœna est doceri

functions of the clergy and the circumstances of external worship, that the whole may be performed with greater decency, so far at least, as the law of God has left these things to human direction. In a word it is certain, that the supreme magistrate may also give an additional degree of force and obligation to the divine laws, by temporal rewards and punishments. We must therefore acknowledge the right of the sovereign in regard to religion, and that this right cannot belong to any power on earth.

XVIII. Yet the defenders of the rights of the priesthood start many difficulties on this subject, which it will be proper to answer. If God, say they, delegates to men the authority he has over his church, it is rather to his pastors and ministers of the gospel, than to sovereigns and magistrates. The power of the magistrate does not belong to the essence of the church. God, on the contrary, has established pastors over his church, and regulated the functions of their ministry; and in their office they are so far from being the vicegerents of sovereigns, that they are not even obliged to pay them an unlimited obedience. Besides, they exercise their functions on the sovereign, as well as on private persons; and the scripture, as well as church history, attribute a right of government to them.

Answer. When they say, that the power of the magistrate does not belong to the essence of the church, they would explain themselves more properly, if they said, that the church may subsist, though there were no magistrates. This is true, but we cannot hence conclude, that the magistrate has no authority over the church; for, by the same reason, we might prove, that merchants, physicians, and every person else, do not depend on the sovereign; because it is not essential to merchants, physicians, and mankind in general, to be governed by magistrates. However reason and scripture subject them to the *superior powers.*

XIX. 2. What they add is very true, that God has established pastors, and regulated their functions, and that in this quality they are not the vicegerents of human powers; but it is easy to convince them by examples, that they can draw no consequence from this to the prejudice of the supreme authority. The function of a physician is from God, as the Author of na-

ture; and that of a pastor is derived also from the Deity, as the Author of religion. This however does not hinder the physician from having a dependance on the sovereign. The same may be said of agriculture, commerce, and all the arts. Besides, the judges hold their offices and places from the prince, yet they do not receive all the rules they are to follow from him It is God, himself, who orders them to take no bribe, and to do nothing through hatred or favor, &c. Nothing more is requisite to show how unjust a consequence it is to pretend, that because a thing is established by God, it should be independent of the sovereign.

XX. 3. But, say they, pastors are not always obliged to obey the supreme magistrate. We agree, but we have observed, that this can only take place in matters directly opposite to the law of God; and we have shown, that this right is inherent in every person in common affairs, as well as in religion, and consequently does not derogate from the authority of the sovereign.

XXI. 4. Neither can we deny, that the pastoral functions are exercised on kings; not only as members of the church, but also in particular as possessed of the regal power. But this proves nothing; for what function is there, that does not regard the sovereign? In particular does the physician less exercise his profession on the prince, than on other people? Does he not equally prescribe for him a regimen and the medicines necessary for his health? Does not the office of a counsellor regard also the sovereign, and even in his quality of chief magistrate? and yet whoever thought of exempting those persons from a subjection to the supreme authority?

XXII. 5. But lastly, say they, is it not certain, that scripture and ancient history ascribe the government of the church to pastors? This is also true, but we need only examine into the nature of the government, belonging to the ministers of religion, to be convinced, that it does not at all diminish the authority of the sovereign.

XXIII. There is a government of *simple direction*, and a government of *authority*. The former consists in giving counsel, or teaching the rules, which ought to be followed. But it

supposes no authority in him, who governs; neither does it restrain the liberty of those, who are governed, except in as much as the laws, inculcated on that occasion, imply an obligation of themselves. Such is the government of physicians concerning health, of lawyers with regard to civil affairs, and of counsellors of state with respect to politics. The opinions of those persons are not obligatory in regard to indifferent things; and in necessary affairs they are not binding of themselves, but only so far, as they inculcate the laws established by nature, or by the sovereign, and this is the species of government belonging to pastors.

XXIV. But there is also a government of *jurisdiction and authority*, which implies the right of establishing regulations, and really obliges the subject. This government, arising from the sovereign authority, obliges by the nature of the authority itself, which confers the power of compulsion. But it is to be remarked, that real authority is inseparable from the right of compelling and obliging. These are the criterion by which alone it may be distinguished. It is this last species of government, which we ascribe to the sovereign; and of which we affirm, that it does not belong to pastors.*

XXV. We therefore say, that the government, belonging to pastors, is that of counsel, instruction, and persuasion, whose entire force and authority consists in the word of God, which they ought to teach the people; and by no means in a personal authority. Their power is to declare the orders of the Deity, and goes no farther.

XXVI. If at present we compare these different species of government we shall easily perceive, that they are not opposite to each other, even in matters of religion. The government of simple direction, which we give to pastors, does not clash with the sovereign authority; on the contrary, it may find an advantage in its aid and assistance. Thus there is no contradiction in saying, that the sovereign governs the pastors, and that, he is also governed by them, provided we attend to the different species of government. These are the general principles of this important doctrine, and it is easy to apply them to particular cases.

* See the gospel according to St Luke, chap. xii. ver. 14. first epistle to the Corinthians, chap. x. ver. 4. Ephes. chap. vi. ver. 17. Philip. iii. ver 20

CHAP. IV.

Of the power of the sovereign over the lives and fortunes of his subjects in criminal cases.

I. THE principal end of civil government and society is to secure to mankind all their natural advantages, and especially their lives. This end necessarily requires, that the sovereign should have some right over the lives of his subjects, either in an *indirect manner*, for the defence of the state, or in a *direct manner*, for the punishment of crimes.

II. The power of the prince over the lives of the subjects, with respect to the defence of the state, regards the right of war, of which we shall treat hereafter. Here we intend to speak only of the power of inflicting punishments.

III. The first question, which presents itself, is to know the origin and foundation of this part of the sovereign power; a question, which cannot be answered without some difficulty. Punishment, it is said, is an evil, which a person suffers in a compulsive way. A man cannot punish himself; and consequently it seems, that individuals could not transfer to the sovereign a right, which they had not over themselves.

IV. Some civilians pretend, that, when a sovereign inflicts punishments on his subjects, he does it by virtue of their own consent; because, by submitting to his authority, they have promised to acquiesce in every thing, he should do with respect to them; and in particular a subject, who determines to commit a crime, consents thereby to suffer the punishment, established against the delinquent.

V. But it seems difficult to determine the right of the sovereign on a presumption of this nature, especially with respect to capital punishments; neither is it necessary to have recourse to this pretended consent of criminals, in order to establish the vindictive power. It is better to say, that the right of punishing malefactors derives its origin from that, which every individual originally had in the society of nature, to repel the injuries,

committed against himself, or against the members of the society; which right has been yielded and transferred to the sovereign.

VI. In a word the right of executing the laws of nature, and of punishing those, who violate them, belongs originally to society in general, and to each individual in particular; otherwise the laws, which nature and reason impose on man, would be entirely useless in a state of nature, if nobody had the power of putting them in execution, or of punishing the violation of them.

VII. Whoever violates the laws of nature testifies thereby, that he tramples on the maxims of reason and equity, which God has prescribed for the common safety; and thus he becomes an enemy of mankind. Since therefore every man has an incontestable right to take care of his own preservation and that of society, he may, without doubt, inflict on such a person punishments, capable of producing repentance in him, of hindering him from committing the like crimes for the future, and even of deterring others by his example. In a word, the same laws of nature, which prohibit vice, do also confer a right of pursuing the perpetrator of it, and of punishing him in a just proportion.

VIII. It is true, in a state of nature, these kinds of chastisements are not inflicted by authority, and the criminal might happen to shelter himself from the punishments, he has to dread from other men, or even repel their attacks. But the right of punishment, is not for that either less real, or less founded. The difficulty of putting it in execution does not destroy it. This was one of the inconveniences of the primitive state, which men have efficaciously remedied by the establishment of sovereignty.

IX. By following these principles, it is easy to comprehend, that the right of a sovereign to punish crimes is no other, than that natural right which human society and every individual had originally to execute the law of nature, and to take care of their own safety. This natural right has been yielded and transferred to the sovereign, who, by means of the authority, with which he is invested, exercises it in such a manner, that it is

difficult for wicked men to evade it. Besides, whether we call this natural right of punishing crimes the vindicative power, or whether we refer it to a kind of *right of war*, is a matter of indifference, neither does it change its nature on that account.

X. This is the true foundation of the right of the sovereign with respect to punishments. This being granted, I define punishment an evil, with which the prince threatens those, who are disposed to violate his laws, and which he really inflicts, in a just proportion, whenever they violate them, independently of the reparation of the damage, with a view to some future good, and finally for the safety and peace of society.

XI. I say, 1. that *punishment is an evil*, and this evil may be of a different nature, according as it affects the life of a person, his body, his reputation, or his estate. Besides, it is indifferent whether this evil consists in hard and toilsome labour, or in suffering something painful.

XII. I add in the second place, that it is the *sovereign*, who awards punishments; not that every punishment in general supposes sovereignty, but because we are here speaking of the right of punishing in society, and as the branch of the supreme power. It is therefore the sovereign alone, who is empowered to award punishments in society; but individuals cannot do themselves justice, without encroaching on the rights of the prince.

XIII. I say, 3. *with which the sovereign threatens, &c.* to denote the chief intention of the prince. He threatens first, and then punishes, if menaces be not sufficient to prevent the crime. Hence it also appears, that punishment ever supposes guilt, and consequently we ought not to reckon among punishments, properly so called, the different evils, to which men are exposed, without having antecedently committed a crime.

XIV. I add, 4. that punishment is inflicted *independently of the reparation of the damage* to show, that these are two things very distinct, and ought not to be confounded. Every crime is attended with two obligations; the first is to repair the injury committed; and the second, to suffer the punishment; the delinquent ought to satisfy both. It is also to be observed on

this occasion, that the right of punishment in civil society is transferred to the magistrate, who may by his own authority pardon a criminal; but this is not the case with respect to the right of satisfaction or reparation of damages. The magistrate cannot acquit the offender in this article, and the injured person always retains his right; so that he is wronged, if he be hindered from obtaining due satisfaction.

XV. Lastly, 5. by saying, *that punishment is inflicted with a view to some good;* we point out the end, which the prince ought to propose to himself in inflicting punishments, and this we shall more particularly explain.

XVI. The sovereign, as such, has not only a right, but is also obliged to punish crimes. The use of punishment is so far from being contrary to equity, that it is absolutely requisite for the public tranquillity. The supreme power would be useless, were it not invested with a right, and armed with a force, sufficient to deter the wicked by the apprehension of some evil, and to make them suffer that evil, when they injure society. It was even necessary, that this power should extend so far, as to make them suffer the greatest of natural evils, which is *death*; in order effectually to repress the most daring audaciousness, and, as it were, to balance the different degrees of human wickedness by a sufficient counterpoise.

XVII. Such is the right of the sovereign. But if he has a right to punish, the criminal must be also under some obligation in this respect; for we cannot possibly conceive a right without an obligation corresponding to it. But wherein does this obligation of the criminal consist? Is he obliged to betray himself, and voluntarily expose himself to punishment? I answer, that this is not necessary for the end, proposed in the establishment of punishments; nor can we reasonably require that a man should thus betray himself; but this does not hinder him from being under a real obligation.

XVIII. 1. It is certain, that when there is a simple pecuniary punishment, to which a man has been lawfully condemned, he ought to pay it, without being forced by the magistrate; not only prudence requires it, but also the rules of justice, according

to which we are bound to repair any injury we have committed, and to obey lawful judges.

XIX. 2. What relates to corporeal, and especially to capital punishments, is attended with greater difficulty. Such is our natural fondness for life, and aversion to infamy, that a criminal cannot be under an obligation of accusing himself voluntarily, and presenting himself to punishment; and indeed neither the public good, nor the rights of the person, entrusted with the supreme authority, demand it.

XX. 3. In consequence of this same principle, a criminal may innocently seek his safety in flight, and is not obliged to remain in prison, if he perceives the doors open, or if he can easily force them. But it is not lawful for him to procure his liberty by the commission of a new crime, as by cutting the throats of the jailors, or by killing those sent to apprehend him.

XXI. 4. But in fine if we suppose, that the criminal is known, that he is taken, that he cannot make his escape from prison, and that, after a mature examination or trial, he is convicted of the crime, and consequently condemned to condign punishment; he is in this case certainly obliged to undergo the punishment, and to acknowledge the lawfulness of his sentence; so that there is no injury done him, nor can he reasonably complain of any one but himself; much less can he withdraw from punishment by violence, and oppose the magistrate in the exercise of his right. In this properly consists the obligation of the criminal with respect to punishment. Let us now inquire more particularly into the end, the sovereign ought to propose to himself in inflicting them.

XXII. In general it is certain, that the prince never ought to inflict punishments but with a view to some public advantage. To make a man suffer merely because he has done a thing, and to attend only to what has passed, is a piece of cruelty, condemned by reason; for after all it is impossible that the fact should be undone. In short the right of punishing is a part of sovereignty; now sovereignty is founded ultimately on a beneficent power. It follows therefore, that, even when the chief ruler makes use of his power of the sword, he ought to aim at

some advantage or future good, agreeebly to what is required of him by the very nature and foundation of his authority.

XXIII. The principal end of punishment is therefore the welfare of society; but as there may be different means of arriving at this end, according to different circumstances, the sovereign also, in inflicting punishments, proposes different and particular views, ever subordinate, and all finally reducible to the principal end abovementioned. What we have said agrees with the observation of Grotius.* "In punishments we must either "have the good of the criminal in view, or the advantage "of him, whose interest it was that the crime should not have "been committed, or the good of all indifferently."

XXIV. Hence the sovereign sometimes proposes to correct the criminal, and make him lose the vicious habit, so as to cure the evil by its contrary, and to take away the sweets of the crime by the bitterness of the punishment. This punishment, if the criminal is reformed by it, tends to the public good. But, if he should persevere in his wickedness, the sovereign must have recourse to more violent remedies, and even to death.

XXV. Sometimes the chief ruler proposes to deprive criminals of the means of committing new crimes; as for example by taking from them the arms, which they might use, by shutting them up in prison, by banishing them, or even by putting them to death. At the same time he takes care of the public safety, not only with respect to the criminals themselves, but also with regard to those, inclined to commit the like crime, in deterring them by those examples. For this reason, nothing is more agreeable to the end of punishment, than to inflict it with such a solemnity, as is most proper to make an impression on the minds of the vulgar.

XXVI. All these particular ends of punishment ought to be constantly subordinate, and referred to the principal end, namely the safety of the public; and the sovereign ought to use them all as means of obtaining that end; so that he should not have recourse to the most rigorous punishments, till those of greater lenity are insufficient to procure the public tranquillity.

* Lib. ii. cap. xx. § 6. N. 2.

XXVII. But here a question arises, whether all actions, contrary to the laws, can be lawfully punished? I answer, that the very end of punishment, and the constitution of human nature, evince there may be actions, in themselves evil, which however it is not necessary for human justice to punish.

XXVIII. And, 1. acts purely internal, or simple thoughts, which do not discover themselves by any external acts prejudicial to society; for example the agreeable idea of a bad action, the desire of committing it, the design of it without proceeding to the execution, &c. All these are not subject to the severity of human punishment, even though it should happen, that they are afterwards discovered.

XXIX. On this subject we must however make the following remarks. The first is, that if this kind of crimes be not subject to human punishment, it is because the weakness of man does not permit, even for the good of society, that he should be treated with the utmost rigour. We ought to have a just regard for humanity in things, which though bad in themselves, do not greatly affect the public order and tranquillity. The second remark, is, that, though acts purely internal are not subject to civil punishment, we must not for this reason conclude, that these acts are not under the direction of the civil laws. We have before established the contrary.* In a word it is evident, that the laws of nature expressly condemn such actions, and that they are punished by the Deity.

XXX. 2. It would be too severe to punish every peccadillo; since human frailty, notwithstanding the greatest caution and attention, cannot avoid a multitude of slips and infirmities. This is a consequence of the toleration due to humanity.

XXXI. 3. In a word, we must necessarily leave unpunished those common vices, which are the consequences of a general corruption; as for instance ambition, avarice, inhumanity, ingratitude, hypocrisy, envy, pride, wrath, &c. For if a sovereign wanted to punish such dispositions with rigor, he would be reduced to the necessity of reigning in a desert. It is sufficient to punish those vices, when they prompt men to enormous and overt acts.

* Chap. i. § 22, &c.

XXXII. It is not even always necessary to punish crimes in themselves punishable, for there are cases, in which the sovereign may pardon; and of this we may judge by the very end of punishment.

XXXIII. The public good is the ultimate end of all punishment. If therefore there are circumstances, in which by pardoning as much or more advantage is procured, than by punishing, then there is no obligation to punish, and the sovereign even ought to show clemency. Thus if the crime be concealed, or be only known to a few, it is not always necessary, nay it would sometimes be dangerous to make it public by punishment; for many abstain from evil, rather from their ignorance of vice, than from a knowledge and love of virtue. Cicero observes, with regard to Solon's having no law against parricide, that this silence of the legislator has been looked upon as a great mark of prudence; for as much as he made no prohibition of a thing, of which there had been yet no example, lest, by speaking of it, he should seem to give the people a notion of committing it, rather than deter them from it.

We may also consider the personal services, which the criminal, or some of his family, have done to the state, and whether he can still be of great advantage to it, so that the impression made by the sight of his punishment be not likely to produce so much good, as he himself is capable of doing. Thus at sea, when the pilot has committed a crime, and there is none on board capable of navigating the ship, it would be destroying all those in the vessel to punish him. This example may also be applied to the general of an army.

In a word the public advantage, which is the true measure of punishment, sometimes requires, that the sovereign should pardon, because of the great number of criminals. The prudence of government demands, that the justice, established for the preservation of society, should not be exercised in such a manner, as to subvert the state.

XXXIV. All crimes are not equal, and it is but equity there should be a due proportion between the crime and the punishment. We may judge of the greatness of a crime in general by its object, by the intention and malice of the criminal and

by the prejudice arising to society from it; and to this latter consequence the two others must be ultimately referred.

XXXV. According to the dignity of the object the action is more or less criminal. We must place in the first class those crimes, which interest society in general; the next are those, which disturb the order of civil society; and last of all those, which relate to individuals. The latter are more or less heinous, according to the value of the thing, of which they deprive us. Thus he, who slays his father, commits a more horrid murder, than if he had killed a stranger. He, who insults a magistrate is more to blame than if he had insulted his equal. A person, who adds murder to robbery, is more guilty than he, who only strips the traveller of his money.

XXXVI. The greater or less degree of malice also contributes very much to the enormity of the crime, and is to be deduced from several circumstances.

1. From the motives, which engage mankind to commit a crime, and which may be more or less easy to resist. Thus he, who robs or murders in cold blood, is more culpable than he, who yields to the violence of some furious passion.

2. From the particular character of the criminal, which, besides the general reasons, ought to retain him in his duty: "The higher a man's birth is, says Juvenal, or the more exalted "he is in dignity, the more enormous is the crime he commits.* "This takes place especially with respect to princes, and so "much the more, because the consequences of their bad ac- "tions are fatal to the state, from the number of persons, who "endeavor to imitate them." This is the judicious remark made by Cicero.† The same observation may also be applied to magistrates and clergymen.

* *Omne animi vitium tanto conspectius in se*
Crimen habet, quanto major, qui peccat, habetur.
———More public scandal vice attends,
As he is great and noble, who offends,
Juv. Sat. viii. 140, 141.

† *De Leg. lib. iii. cap.* 14. Nec enim tantum mali est peccare principes quanquam est magnum hoc per seipsum malum; quantum illud, quod permulti imitatores principum existunt; quo perniciosius de republica merentur vitiosi principes, quod non solum vitia concipiunt ipsi, sed ea infundunt in civitatem. Neque solum obsunt, quod ipsi corrumpuntur, sed etiam quod corrumpunt; plusque exemplo, quam peccato, nocent.

3. We must also consider the circumstances of time and place, in which the crime has been committed, the manner of committing it, the instruments used for that purpose, &c.

4. Lastly we are to consider whether the criminal has made a custom of committing such a crime, or if he is but rarely guilty of it, whether he has committed it of his own accord, or been seduced by others, &c.

XXXVII. We may easily perceive that the difference of these circumstances interests the happiness and tranquillity of society, and consequently either augments or diminishes the enormity of the crime.

XXXVIII. There are therefore crimes less or greater than others; and consequently they do not all deserve to to be punished with equal severity; but the kind and precise degree of punishment depend on the prudence of the sovereign. The following are the principal rules, by which he ought to be directed.

1. The degree of punishment ought ever to be proportioned to the end of inflicting it, that is, to repress the insolence and malignity of the wicked, and to procure the internal peace and safety of the state. It is upon this principle, that we must augment or diminish the rigour of punishment. The punishment is too rigorous, if we can by milder means obtain the end proposed; and, on the contrary, it is too moderate, when it has not a force sufficient to produce these effects, and when the criminals themselves despise it.

2. According to this principle, every crime may be punished as the public good requires, without considering whether there be an equal or less punishment for another crime, which in itself, appears more or less heinous. Thus robbery, for instance, is of its own nature a less crime than murder; and yet highwaymen may, without injustice, be punished with death, as well as murderers.

3. The equality, which the sovereign ought ever to observe in the exercise of justice, consists in punishing those alike, who have trespassed alike; and in not pardoning a person, without very good reason, who has committed a crime, for which others have been punished.

4. It must be also observed, that we cannot multiply the kinds and degrees of punishment *in infinitum*; and, as there is no greater punishment than death, it is necessary, that certain crimes, though unequal in themselves, should be equally subject to capital punishment. All, that can be said, is, that death may be more or less terrible, according as we employ a milder or shorter method to deprive a person of life.

5. We ought, as much as possible, to incline to the merciful side, when there are not strong reasons for the contrary. This is the second part of clemency. The first consists in a total exemption from punishment, when the good of the state permits it. This is also one of the rules of the Roman law.*

6. On the contrary, it is sometimes necessary and convenient to heighten the punishment, and to set such an example, as may intimidate the wicked, when the evil can be prevented only by violent remedies.†

7. The same punishment does not make the same impression on all kinds of people, and consequently has not the same force to deter them from vice. We ought therefore to consider, both in the general penal sanction and in the application of it, the person of the criminal, and in that all those qualities of age, sex, state, riches, strength, and the like, which may either increase or diminish the sense of punishment. A particular fine, for instance, will distress a beggar, while it is nothing to a rich man. The same mark of ignominy will be very mortifying to a person of honor and quality, which would pass for a trifle with a vulgar fellow. Men have more strength to support punishments than women, and full grown people more than those of tender years, &c. Let us also observe, that it belongs to the justice and prudence of government, always to follow the order of judgment and of the judiciary procedure in the infliction of punishments. This is necessary, not only that we may not commit injustice in an affair of such importance, but also that the sovereign may be secured against all suspicion of injustice and

* In pœnalibus causis, benignus interpretandum est. Lib. cv. § 2. ff. de Reg. Jur. Vid. sup. § 33.

† Nonnunquam evenit, ut aliquorem maleficiorum supplicia exacerbantur, quoties nimirum, multis personis grassantibus, exemplo opus sit. Lib. xvi § 10 ff. de pœnis.

partiality. However there are sometimes extraordinary and pressing circumstances, where the good of the state and the public safety do not permit us exactly to observe all the formalities of the criminal procedure; and provided, in those circumstances, the crime be duly proved, the sovereign may judge summarily, and without delay punish a criminal, whose punishment cannot be deferred without imminent danger to the state. Lastly it is also a rule of prudence, that if we cannot chastise a criminal without exposing the state to great danger, the sovereign ought not only to grant a pardon, but also to do it in such a manner, that it may appear rather to be the effect of *clemency* than of *necessity*.

XXXIX. What we have said relates to punishments, inflicted for crimes, of which a person is the sole and proper author. With respect to crimes committed by several, the following observations may serve as principles.

1. It is certain that those, who are really accomplices in the crime, ought to be punished in proportion to the share they have in it, and according as they ought to be considered as principal causes, or subordinate and collateral instruments. In these cases, such persons suffer rather for their own crime, than for that of another.

2. As for crimes committed by a body or community, those only are really culpable, who have given their actual consent to them; but they, who have been of a contrary opinion, are absolutely innocent. Thus Alexander, having given orders to sell all the Thebans after the taking of their city, excepted those, who, in the public deliberations, had opposed the breaking of the alliance with the Macedonians.

3. Hence it is, that, with respect to crimes committed by a multitude, reasons of state and humanity direct, that we should principally punish those, who are ringleaders, and pardon the rest. The severity of the sovereign to some will repress the audaciousness of the most resolute; and his clemency to others will gain him the hearts of the multitude.*

4. If the ringleaders have sheltered themselves by flight, or otherwise, or if they have all an equal share in the crime, we

* Quintil. Declam. cap. vii. p. m. 237.

must have recourse to a decimation, or other means, to punish some of them. By this method the terror reaches all, while but few fall under the punishment.

XL. Besides, it is a certain and inviolable rule, that no person can be lawfully punished, for the crime of another, in which he has had no share. All merit and demerit is entirely personal and incommunicable; and we have no right to punish any but those, who deserve it.

XLI. It sometimes happens however, that innocent persons suffer on the account of the crimes of others; but we must make two remarks on this subject.

1. Not every thing, that occasions uneasiness, pain, or loss to a person, is properly a punishment; for example when subjects suffer some grievances from the miscarriages and crimes of their prince, it is not in respect to them a punishment, but a misfortune.

The second remark is, that these kinds of evils, or indirect punishments, if we may call them so, are inseparable from the constitution of human affairs.

XLII. Thus if we confiscate the effects of a person, his children suffer indeed for it; but it is not properly a punishment to them, since those effects ought to belong to them only on supposition that their father had kept them till his death. In a word we must either almost entirely abolish the use of punishments, or acknowledge, that these inconveniences, inseparable from the constitution of human affairs, and from the particular relations, which men have to each other, have nothing in themselves unjust.

XLIII. Lastly it is to be observed, that there are crimes so enormous, so essentially affecting in regard to society, that the public good authorises the sovereign to take the strongest precautions against them, and even, if necessary, to make part of the punishment fall on the persons most dear to the criminal. Thus the children of traitors, or state criminals, may be excluded from honors and preferments. The father is severely punished by this method, since he sees he is the cause, why the persons dearest to him are reduced to live in obscurity. But this is not properly a punishment in regard to the children; for the sovereign, having a right to give public employments to whom he pleases, may, when the public good requires it, exclude even persons, who have done nothing to render themselves unworthy of these preferments. I confess that this is a hardship, but necessity authorises it, to the end that the tenderness of a parent for his offspring may render him more cautious to undertake nothing against the state. But equity ought always to direct those judgments, and to mitigate them according to circumstances.

XLIV. I am not of opinion, that we can exceed these bounds, neither does the public good require it. It is therefore a real piece of injustice, established among several nations, namely to banish or kill the children of a tyrant or traitor, and sometimes all his relations, though they were no accomplices in his crimes. This is sufficient to give us a right idea of the famous law of Arcadius* the Christian emperor.

CHAP. V.

Of the power of the sovereigns over the bona Reipublicæ, *or the goods contained in the commonwealth.*

I. THE right of the sovereign over the goods, contained in the commonwealth, relates either to the goods of the subject, or to those, which belong to the commonwealth itself, as such.

II. The right of the prince over the goods of the subject may be established two different ways; for either it may be founded on the very nature of the sovereignty, or on the particular manner in which it was acquired.

III. If we suppose, that a chief ruler possesses, with a full right of property, all the goods contained in the commonwealth, and that he has collected as it were his own subjects, who originally hold their estates of him, then it is certain, that the sovereign has as absolute a power over those estates, as every master of a family has over his own patrimony; and that the subjects cannot enjoy or dispose of those goods or estates, but so

* Cod. and L. Jul. Maj. lib. ix. tit. 8. leg. 5.

far as the sovereign permits. In these circumstances, while the sovereign has remitted nothing of his right by irrevocable grants, his subjects possess their estates in a *precarious* manner, revocable at pleasure, whenever the prince thinks fit; they can only supply themselves with sustenance and other necessaries from them. In this case the sovereignty is accompanied with a right of absolute property.

IV. But, 1. this manner of establishing the power of the sovereign over the goods, of the subjects cannot be of great use; and if it has sometimes taken place, it has only been among the oriental nations, who easily submit to a despotic government.

2. Experience teaches us, that this absolute dominion of the sovereign over the goods of the subject does not tend to the advantage of the state. A modern traveller observes, that the countries, where this propriety of the prince prevails, however beautiful and fertile of themselves, become daily more desolate, poor, and barbarous; or that at least they are not so flourishing, as most of the kingdoms of Europe, where the subjects possess their estates as their own property, exclusive of the prince.

3 The supreme power does not of itself require, that the prince should have this absolute dominion over the estates of his subjects. The property of individuals is prior to the formation of states, and there is no reason, which can induce us to suppose, that those individuals entirely transferred to the sovereign the right they had over their own estates; on the contrary, it is to secure a quiet and easy possession of their properties, that they have instituted government and sovereignty.

4. Besides, if we should suppose an absolute sovereignty acquired by arms, yet this does not of itself give an arbitrary dominion over the property of the subject. The same is true even of a patrimonial sovereignty, which confers a right of alienating the crown; for this right of the sovereign does not hinder the subject from enjoying his respective properties.

V. Let us therefore conclude, that in general the right of the prince over the goods of the subjects is not an absolute dominion over their properties, but a right founded on the nature and end of sovereignty, which invests him with the power of

disposing of those estates in different manners, for the benefit of individuals, as well as of the state, without depriving the subjects of their right to their properties, except in cases where it is absolutely necessary for the public good.

VI. This being premised, the prince, as sovereign, has a right over the estates of his subjects principally in three different manners.

The first consists in regulating, by wise laws, the use, which every one ought to make of his goods and estate, for the advantage of the state and that of individuals.

The second, in raising subsidies and taxes.

The third, in using the rights of sovereign or *transcendental* property.*

VII. To the first head we must reduce all *sumptuary laws*, by which bounds are set to unnecessary expenses, which ruin families and consequently impoverish the state. Nothing is more conducive to the happiness of a nation, or more worthy of the care of the sovereign, than to oblige the subjects to economy, frugality, and labor.

When luxury has once prevailed in a nation, the evil becomes almost incurable. As too great authority spoils kings, so luxury poisons a whole people. The most superfluous things are looked upon as necessary, and new necessities are daily invented. Thus families are ruined, and individuals disabled from contributing to the expenses necessary for the public good. An individual, for instance, who spends only three fifths of his income, and pays one fifth for the public service, will not hurt himself, since he lays up a fifth to increase his stock. But if he spend all his income, he either cannot pay the taxes, or he must break in upon his capital.

Another inconvenience is, that not only the estates of individuals are squandered away by luxury, but, what is still worse, they are generally carried abroad into foreign countries, in pursuit of those things, which flatter luxury and vanity.

The impoverishing of individuals produces another evil for the state, by hindering marriages. On the contrary, people are

* Dominium eminens.

more inclined to marriage, when a moderate expense is sufficient for the support of a family.

This the emperor Augustus was very sensible of; for when he wanted to reform the manners of the Romans, among the various edicts, which he either made or renewed, he reestablished both the sumptuary law, and that, which obliged people to marry.

When luxury is once introduced, it soon becomes a general evil, and the contagion insensibly spreads from the first men of the state to the very dregs of the people. The king's relations want to imitate his magnificence; the nobility, that of his relations; the gentry or middle sort of people, endeavour to equal the nobility; and the poor would fain pass for gentry. Thus every one living beyond his income, the people are ruined, and all orders and distinctions confounded.

History informs us, that in all ages luxury has been one of the causes, which has more or less contributed to the ruin and decay even of the most powerful states, because it sensibly enervates courage, and destroys virtue. Suetonius observes, that Julius Cæsar invaded the liberties of his country only in consequence of not knowing how to pay the debts, he had contracted by his excessive prodigality, nor how to support his expensive way of living. Many sided with him, because they had not wherewith to supply their luxury, to which they had been accustomed, and they were in hopes of getting by the civil wars enough to supply their former extravagance.*

We must observe in fine, that, to render the sumptuary laws more effectual, princes and magistrates ought, by the example of their own moderation, to put those out of countenance, who love extravagance, and to encourage the prudent, who would easily submit to follow the pattern of a good economy and honest frugality.

VIII. To this right of the sovereign of directing the subjects in the use of their estates and goods, we must also reduce the laws against gaming and prodigality, those, which set bounds to grants, legacies, and testaments; and in fine those against idle

* See Sall. ad Cæsar. de Repub. ordinand.

and lazy people, and against persons, who suffer their estates to run to ruin, purely by carelessness and neglect.

IX. Above all, it is of great importance to use every endeavor to banish idleness, that fruitful source of disorders. The want of a useful and honest occupation is the foundation of an infinite number of mischiefs. The human mind cannot remain in a state of inaction, and, if it be not employed on something good, it will inevitably apply itself to something bad, as the experience of all ages demonstrates. It were therefore to be wished, that there were laws against idleness, to prevent its pernicious effects; and that no person was permitted to live without some honest occupation either of the mind or body. Especially young people, who aspire after political, ecclesiastical, or military employments, ought not to be permitted to pass, in shameful idleness, the time of their life most proper for the study of morality, politics, and religion. It is obvious that a wise prince may, from these reflections, draw very important instructions for government.

X. The second manner, in which the prince can dispose of the goods or estates of his subjects, is, by demanding taxes or subsidies of them. That the sovereign has this right will evidently appear, if we consider, that taxes are no more than a contribution, which individuals pay to the state for the preservation and defence of their lives and properties, a contribution absolutely necessary both for the ordinary and extraordinary expenses of government, which the sovereign neither can or ought to furnish out of his own fund. He must therefore, for that end and purpose, have a right to take away part of the goods of the subject by way of tax.

XI. Tacitus relates a memorable story on this subject. "Nero, he says, once thought to abolish all taxes, and to make "this magnificent grant to the Roman people; but the "senate moderated his ardour; and, after having commended "the emperor for his generous design, they told him, that the "empire would inevitably fall, if its foundations were sapped; "that most of the taxes had been established by the consuls and tribunes during the very height of liberty in the "times of the republic, and that they were the only means of

" supplying the immense expenses necessary for the support of " so great an empire."

XII. Nothing is then generally more unjust and unreasonable, than the complaints of the populace, who frequently ascribe their misery to taxes, without reflecting, that these are, on the contrary, the foundation of the tranquillity and safety of the state, and that they cannot refuse to pay them without prejudicing their own interests.

XIII. However the end and prudence of civil government require not only, that the people should not be overcharged in this respect, but also that the taxes should be raised in as gentle and imperceptible a manner as possible.

XIV. And 1. the subjects must be equally charged, that they may have no just reason of complaint. A burden, equally supported by all, is lighter to every individual; but, if a considerable number release or excuse themselves, it becomes much more heavy and insupportable to the rest. As every subject equally enjoys the protection of the government, and the safety, which it procures; it is just that they should all contribute to its support in a proper equality.

XV. 2. It is to be observed however, that this equality does not consist in paying equal sums of money, but in equally bearing the burden, imposed for the good of the state; that is, there must be a just proportion between the burden of the tax and the benefit of peace; for though all equally enjoy peace, yet the advantages, which all reap from it, are not equal.

XVI. 3. Every man ought therefore to be taxed in proportion to his income, both in ordinary and extraordinary exigencies.

XVII. 4. Experience shows, that the best method of raising taxes is to lay them on things, daily consumed in life.

XVIII. 5. As to merchandizes imported, it is to be observed, that, if they are not necessary, but only subservient to luxury, very great duties may justly be laid on them.

XIX. 6. When foreign merchandizes consist of such things, as may grow, or be manufactured at home, by the industry and application of our own people, the imposts ought to be raised higher upon those articles.

XX. 7. With regard to the exportation of commodities of our own growth, if it be the interest of the state, that they should not go out of the country, it may be right to raise the customs upon them; but on the contrary, if it is for the public advantage, that they should be sent to foreign markets, then the duty of exportation ought to be diminished, or absolutely taken away. In some countries, by a wise piece of policy, rewards are given to the subjects, who export such commodities, as are in too great plenty, and far surpassing the wants of the inhabitants.

XXI. 8. In a word, in the application of all these maxims, the sovereign must attend to the good of trade, and take all proper measures to make it flourish.

XXII. It is unnecessary to observe, that the right of the sovereign, with respect to taxes, being founded on the wants of the state, he ought never to raise them, but in proportion to those wants; neither should he employ them, but with that view, nor apply them to his own private uses.

XXIII. He ought also to attend to the conduct of the officers, who collect them, so as to hinder their importunity and oppression. Thus Tacitus commends a very wise edict of the emperor Nero, " who ordered, that the magistrates of Rome " and of the provinces should receive complaints against the " publicans at all times, and regulate them on the spot."

XXIV. The *sovereign* or *transcendental* property,* which, as we have said, constitutes the third part of the sovereign's power over the estates of his subjects,-consists in the right of making use of every thing, the subject possesses, in order to answer the necessities of the state.

XXV. Thus for example, if a town is to be fortified, he may take the gardens, lands, or houses of private subjects, situated in the place, where the ramparts or ditches are to be raised. In sieges he may beat down houses and trees belonging to private persons to the end, that the enemy may not be sheltered by them, or the garrison incommoded.

XXVI. There are great disputes among politicians, concerning this *transcendental property*. Some absolutely will not ad-

* Dominium eminens.

mit of it; but the dispute turns more upon the word, than the thing. It is certain, that the very nature of sovereignty authorises a prince, in case of necessity, to make use of the goods and fortunes of his subjects; since in conferring the supreme authority upon him, they have at the same time given him the power of doing and exacting every thing necessary for the preservation and advantage of the state. Whether this be called *transcendental property*, or by some other name, is altogether indifferent, provided we are agreed about the right itself.

XXVII. To say something more particular concerning this *transcendental property*, we must observe it to be a maxim of natural equity, that, when contributions are to be raised for the exigencies of the state, and for the preservation of some particular object by persons, who enjoy it in common, every man ought to pay his quota, and should not be forced to bear more of the burden, than another.

XXVIII. But since it may happen, that the pressing wants of the state, and particular circumstances, will not permit this rule to be literally followed, there is a necessity, that the sovereign should have a right to deviate from it, and to seize on the property of a private subject, the use of which, in the present circumstances, is become necessary to the public. Hence this right takes place only in case of a necessity of state, which ought not to have too great an extent, but should be tempered as much as possible with the rules of equity.

XXIX. It is therefore just in that case, that the proprietors should be indemnified, as near as possible, either by their fellow subjects, or by the exchequer. But if the subjects have voluntarily exposed themselves, by building houses in a place, where they are to be pulled down in time of war, then the state is not in rigour obliged to indemnify them, and they may be reasonably thought to have consented to this loss. This is sufficient for what relates to the right of the sovereign over the estates of the subject.

XXX. But, besides these rights, the prince has also originally a power of disposing of certain places, called *public goods*, because they belong to the state as such. But, as these public goods are not all of the same kind, the right of the sovereign in this respect also varies.

XXXI. There are goods, intended for the support of the king and the royal family, and others to defray the expenses of the government. The former are called the crown lands, or the patrimony of the prince; and the latter the public treasure, or the revenue of the state.

XXXII. With regard to the former, the sovereign has the full and entire profits, and may dispose of the revenues, arising from them, as he absolutely pleases. So that what he lays up out of his income makes an accession to his own private patrimony, unless the laws of the land have determined otherwise. With regard to other public goods, he has only the simple administration of them, in which he ought to propose only the advantage of the state, and to express as much care and fidelity, as a guardian with respect to the estate of his pupil.

XXXIII. By these principles we may judge to whom the acquisitions belong, which a prince has made during his reign; for if these acquisitions arise from the goods, intended to defray the public expense, they ought certainly to accrue to the public, and not to the prince's private patrimony. But if a king has undertaken and supported a war at his own expense, and without engaging or charging the state in the least, he may lawfully appropriate the acquisitions, he has made in such an expidition.

XXXIV. From the principles here established it follows also, that the sovereign cannot, without the consent of the people or their representatives, alienate the least part either of the public patrimony, or of the crown lands, of which he has only the use. But we must distinguish between the goods themselves and the profits or produce of them. The king may dispose of the revenues or profits, as he thinks proper, though he cannot alienate the principle.

XXXV. A prince indeed, who has a right of laying taxes if he thinks meet and just, may, when the necessities of the commonwealth require it, mortgage a part of the public patrimony. For it is the same thing to the people, whether they give money to prevent the mortgage, or it be levied upon them afterwards in order to redeem it.

XXXVI. This however is to be understood upon supposition, that things are not otherwise regulated by the fundamental laws of the state.

XXXVII. In respect to the alienation of the kingdom, or some part of it, from the principles hitherto established, we may easily form a judgment of the matter.

And 1. if there be any such thing, as a patrimonial kingdom, it is evident that the sovereign may alienate the whole, and still more so, that he may transfer a part of it.*

XXXVIII. 2. But, if the kingdom be not possessed as a patrimony, the king cannot by his own authority, transfer or alienate any part of it; for then the consent of the people is necessary. Sovereignty of itself does not imply the right of alienation, and as the people cannot take the crown from the prince against his will, neither has the king a power of substituting another sovereign in his place without their consent.

XXXIX. 3. But if only a part of the kingdom is to be alienated, besides the approbation of the king and that of the people, it is necessary, that the inhabitants of the part, which is to be alienated, should also consent; and the latter seems to be the most necessary. It is to no purpose, that the other parts of the kingdom agree to the alienation of this province, if the inhabitants themselves oppose it. The right of the plurality of suffrages does not extend so far, as to cut off from the body of the state those, who have not once violated their engagements, nor the laws of society.

XL. And indeed it is evident, that the persons, who first erected the commonwealth, and those, who voluntarily came into it afterwards, bound themselves, by mutual compact, to form a permanent body or society, under one and the same government, so long at least, as they inclined to remain in the territories of the same state; and it is with a view to the advantages, which accrued to them in common from this reciprocal union, that they first erected the state. This is the foundation of their compacts in regard to government. Therefore they cannot, against their will, be deprived of the right, they have acquired, of being a part of a certain body politic, except by way of punishment. Besides, in this case, there is an *obligation*, corresponding to the above *right*. The state, by virtue of the same compact, has acquired a right over each of its members, so that no subject can

* See Grotius, lib. ii. cap. 6.

put himself under a foreign government, nor disclaim the authority of his natural sovereign.

XLI. 4. It is however to be observed, that there are two general exceptions to the principles here established, both of them founded on the right and privileges, arising from necessity. The first is, that, though the body of the state has not the right of alienating any of its parts, so as to oblige that part, against its will, to submit to a new master, the state however may be justified in abandoning one of its parts, when there is an evident danger of perishing if they continue united.

XLII. It is true that even under those circumstances, the sovereign cannot directly oblige one of his towns or provinces to submit to another government. He only has a power to withdraw his forces, or abandon the inhabitants; but they retain the right of defending themselves if they can; so that, if they find they have strength sufficient to resist the enemy, there is no reason why they should not; and, if they succeed, they may erect themselves into a distinct commonwealth. Hence the conqueror becomes the lawful sovereign of that particular country only by the consent of the inhabitants, or by their swearing allegiance to him.

XLIII. It may be said, that, properly speaking, the state or the sovereign do not alienate, in this case, such a part, but only renounce a society, whose engagements are at an end by virtue of a tacit exception, arising from necessity. After all it would be in vain for the body to persist in defending such a part, since we suppose it unable to preserve or defend itself. It is therefore a mere misfortune, which must be suffered by the abandoned part.

XLIV 5. But, if this be the right of the body with respect to the part, the part has also, in like circumstances, the same right with regard to the body. Thus we cannot condemn a town, which, after having made the best resistance it could, chooses rather to surrender to the enemy, than be pillaged and exposed to fire and sword.

XLV. In a word, every one has a natural right to take care of his own preservation by all possible means; and it is principally for the better attainment of this end, that men have entered

into civil societies. If therefore the state can no longer defend and protect the subjects, they are disengaged from the ties they were under, and resume their original right of taking care of themselves independently of the state, in the manner they think most proper. Thus things are equal on both sides; and the sentiment of Grotius, who refuses the body of the state, with respect to the part, the same right, which he grants the part, with respect to the body, cannot be maintained.

XLVI. We shall conclude this chapter with two remarks. The first is, that the maxim, which some politicians inculcate so strongly, namely, that the goods, appropriated to the crown, are absolutely unalienable, is not true, except on the terms, and agreebly to the principles here established. What the same politicians add, that an alienation, succeeded by a peaceable possession for a long course of years, does not hinder a future right to what belonged to the crown, and the resumption of it by main force, on the first occasion, is altogether unreasonable.

The second observation is, that, since it is not lawful for a king independently of the will of the people or of their representatives, to alienate the whole or any part of his kingdom, it is not right for him to render it feudatory to another prince; for this is evidently a kind of alienation.

END OF THE THIRD PART.

THE

PRINCIPLES

OF

POLITIC LAW.

PART IV.

In which are considered the different rights of sovereignty with respect to foreign states; the right of war and every thing relating to it; pulic treaties, and the right of ambassadors.

CHAP. I.

Of war in general, and first of the right of the sovereign, in this respect, over his subjects.

I. WHATEVER has been hitherto said of the essential parts of sovereignty properly and directly regards the internal administration of the state. But, as the happiness and prosperty of a nation demand not only, that order and peace should be maintained at home, but also, that the state should be protected from the insults of enemies abroad, and obtain all the advantages it can from other nations; we shall proceed to examine those parts of sovereignty, which directly regard the safety and external advantages of the state, and discuss the most essential questions relating to this subject.

II. To trace things from their original we must first observe, that mankind being divided into several societies, called *states* or *nations*, those political bodies, forming a kind of society among themselves, are also subjected to those primitive and general laws, which God has given to all mankind, and consequently they are obliged to practise certain duties towards each other.

III. It is the system or assemblage of those laws, that is

properly called the law of *nations*; and these are no more, than the laws of nature, which men, considered as members of society in general, ought to practise towards each other; or, in other words, the law of nations is no more, than the general law of *sociability*, applied not to individuals, composing a society, but to men, as forming different bodies, called *states* or *nations*.

IV. The natural state of nations, with respect to each other, is certainly that of society and peace. Such is the natural and primitive state of one man with respect to another; and whatever alteration mankind may have in regard to their original state, they cannot, without violating their duty, break in upon that state of peace and society, in which nature has placed them; and which by her *laws* she has so strongly recommended to their observance.

V. Hence proceed several maxims of the law of nations; for example, that all states ought to look upon themselves as naturally equal and independent, and to treat each other as such on all occasions. Likewise that they ought to do no injury to any other, but, on the contrary, repair that, which they may have committed. Hence also arises their right of endeavouring to provide for their safety and happiness, and of employing force and arms against those, who declare themselves their enemies. Fidelity in treaties and alliances, and the respect due to ambassadors, are derived from the same principle. This is the idea we ought to form of the law of nations in general.

VI. We do not here propose to enter into all the political questions, which may be started concerning the law of nations; we shall only examine the following articles, which, being the most considerable, include almost all the rest, I mean the *right of war*, that of *treaties and alliances*, and that of *ambassadors*.

VII. The subject of the right of war, being equally important and extensive, merits to be treated with great exactness. We have already observed, that it is a fundamental maxim of the law of nature and nations, that individuals and states ought to live in a state of union and society; that they should not injure each other, but on the contrary should mutually exercise the duties of humanity.

VIII. Whenever men practise these duties, they are said to be in a state of peace. This state is certainly the most agreeable to our nature, as well as the most capable of promoting happiness; and indeed the law of nature was intended chiefly to establish and preserve it.

IX. The state opposite to that of union and peace is what we call *war*, which, in the most general sense, is no more than the state of those, who try to determine their differences by the ways of force. I say this is the most general sense, for, in a more limited signification, common use has restrained the word *war* to that, carried on between sovereign powers.*

X. Though a state of peace and mutual benevolence is certainly most natural to man and most agreeable to the laws, which ought to be his guide, war is nevertheless permitted in certain circumstances, and sometimes necessary both for individuals and nations. This we have sufficiently shown in the second part of this work, by establishing the rights, with which nature has invested mankind for their own preservation, and the means they may lawfully employ for attaining that end. The principles of this kind, which we have established with respect to particulars, equally, and even for stronger reasons, are applicable to nations.

XI. The law of God no less enjoins a whole nation to take care of their preservation, than it does private men. It is therefore just, that they should employ force against those, who, declaring themselves their enemies, violate the law of sociability towards them, refuse them their due, seek to deprive them of their advantages, and even to destroy them. It is therefore for the good of society, that people should be able to repress the malice and efforts of those, who subvert the foundations of it; otherwise the human species would become the victims of robbery and licentiousness. For the right of making war is, properly speaking, the most powerful means of maintaining peace.

XII. Hence it is certain that the sovereign, in whose hands the interest of the whole society is lodged, has a right to make war. But, if it be so, we must of course allow him the right of employing the several means necessary for that end. In a

* See lower down, chap. iii.

word, we must grant him the power of levying troops, and obliging them to perform the most dangerous duties even at the peril of their lives. And this is one branch of the right of life and death, which manifestly belongs to the sovereign.

XIII. But as the strength and valour of troops depend, in a great measure, on their being well disciplined, the sovereign ought, even in times of peace, to train the subjects up to martial exercises, to the end that they, when occasion requires, be more able to sustain the fatigues, and perform the different duties of war.

XIV. The obligation, under which subjects are in this respect, is so rigorous and strong, that, strictly speaking, no man can be exempted from taking up arms, when his country calls on him for assistance; and his refusal would be a just reason not to tolerate such a person any longer in the society. If in most governments there are some subjects exempted from military exercises, this impunity is not a privilege, that belongs to them by right; it is only a toleration, that has no force, but when there are troops sufficient for the defence of the commonwealth, and the persons, to whom it is granted, follow some other useful and necessary employment. Excepting this case, in time of need all the members of the state ought to take the field, and none can be lawfully exempted.

XV. In consequence of these principles, military discipline should be very rigorous; the smallest neglect, or the least fault, is often of the last importance, and for that reason may be severely punished. Other judges make some allowance for the weakness of human nature, or the violence of passions; but in a counsel of war, there is not so much indulgence; death is often inflicted on a soldier, whom the dread of that very evil has induced to quit his post.

XVI. It is therefore the duty of those, who are once enlisted, to maintain the post, where the general has placed them; and to fight bravely, even though they run a risk of losing their lives. To conquer or die is the law of such engagements; and it is certainly much better to lose one's life gloriously, by endeavouring to destroy that of the enemy, than to die in a cowardly manner. Hence some judgment may be formed of what

we ought to think of those captains of ships, who, by orders of their superior, blow themselves up into the air, rather than fall into the hands of the enemy. Suppose the number of ships equal on both sides, if one of our vessels is taken the enemy will have two more than we; whereas if one of ours is sunk, they will have but one more; and if the vessel, which wants to take ours, sink with it, which often happens, the forces will remain equal.

XVII. In regard to the question, whether subjects are obliged to take up arms, and serve in an unjust war, we must judge of it by the principles already established at the end of the first chapter of the third part, which treats of *the legislative power*.

XVIII. These are the obligations of subjects with respect to war and to the defence of government; but this part of the supreme power being of great importance, the utmost precaution is required in the sovereign to exercise it in such a manner, as may prove advantageous to the state. We shall here point out the principal maxims on this article of politics.

XIX. First then it is evident, that the force of a state, with respect to war, consists chiefly in the number of its inhabitants; sovereigns therefore ought to neglect nothing, that can either support or augment the number of them.

XX. Among the other means, which may be used for this purpose, there are three of great efficacy. The first is easily to receive all strangers of good character, who want to settle among us; to let them taste the sweets of government; and to make them share the advantages of civil liberty. Thus the state is filled with the subjects, who bring with them the arts, commerce, and riches; and among whom we may, in time of need, find a considerable number of good soldiers.

XXI. Another thing, conducive to the same end, is to favor and encourage marriages, which are the pledges of the state; and to make good laws for this purpose. The mildness of the government may, among other things, greatly contribute to incline the subjects to join together in wedlock. People, loaded with taxes, who can hardly, by their labour, find wherewithal to supply the wants of life and the public charges, are not inclined to marry, lest their children should starve for hunger.

XXII. Lastly another mean, very proper for maintaining and augmenting the number of inhabitants, is liberty of conscience. Religion is one of the greatest advantages of mankind, and all men view it in that light. Every thing, tending to deprive them of this liberty, appears insupportable. They cannot easily accustom themselves to a government, which tyrannizes over them in this article. France, Spain, and Holland present us with sensible proofs of the truth of these observations. Persecutions have deprived the first of a great part of her inhabitants; by which means she has been considerably weakened. The second is almost unpeopled; and this depopulation is occasioned by the barbarous and tyrannical establishment, called the *Inquisition*; an establishment equally affronting to God and pernicious to human society, and which has made a kind of desert of one of the finest countries in Europe. The third, in consequence of an entire liberty of conscience, which she offers to all the world, is considerably improved even amidst wars and disasters. She has raised herself, as it were, on the ruin of other nations, and by the number of her inhabitants, who have brought power, commerce, and riches into her bosom, she enjoys a high degree of credit and prosperity.

XXIII. The great number of inhabitants is therefore the principal strength of a country. But for this end, the subjects must also be inured betimes to labor, and trained to virtue. Luxury, effeminacy, and pleasure, impair the body, and enervate the mind. A prince therefore, who desires to put the military establishment on a proper footing, ought to take particular care of the education of youth, so as to procure his subjects the means of forming themselves, by a strict discipline, to bodily exercises, and to prevent luxury and pleasure from debauching their manners, or weakening their courage.

XXIV. Lastly one of the most effectual means of having good troops is to make them observe the military order and discipline with all possible care and exactness; to take particular care, that the soldiers be punctually paid; to see that the sick be properly looked after, and to furnish them with the assistance, they stand in need of; lastly, to preserve among them a knowledge of religion and of the duties it prescribes, by procuring them

the means of instruction. These are the principal maxims, which good policy suggests to sovereigns, by means of which they may reasonably hope always to find good troops among their subjects, such as shall be disposed to spill the last drop of their blood in defence of their country.

CHAP. II.

Of the causes of war.

I. IF war be sometimes lawful, and even necessary, as we have already demonstrated, this is to be understood when it is undertaken only for just reasons, and on condition, that the prince, who undertakes it, proposes, by that method, to obtain a solid and lasting peace. A war may therefore be either just or unjust, according to the cause, which has produced it.

II. A war is just if undertaken for just reasons; and unjust if it be entered into without a cause, or at least without a just and sufficient motive.

III. To illustrate the matter, we may, with Grotius, distinguish between the justifying reasons, and the motives of the war. The former are those, which render, or seem to render, the war just with respect to the enemy, so that, in taking up arms against him, we do not think we do him injustice. The latter are the views of interest, which determine a prince to come to an open rupture. Thus, in the war of Alexander against Darius, the justifying reason of the former was to revenge the injuries, which the Greeks had received from the Persians. The motives were, the ambition, vanity, and avarice of that conqueror, who took up arms the more cheerfully, as the expeditions of Xenophon and Agesilaus made him conceive great hopes of success. The justifying reason of the second *Punic* war was a dispute about the city of Saguntum. The motive was an old grudge, entertained by the Carthaginians against the Romans for the hard terms, they were obliged to submit to, when reduced to a low condition and the encouragement given them by the success of their arms in Spain.

IV. In a war perfectly just, the justifying reasons must not only be lawful, but also must be blended with the motive; that is, we must never undertake a war but from the necessity of defending ourselves against an insult, of recovering our undoubted right, or of obtaining satisfaction for a manifest injury.

V. Thus a war may be vicious or unjust, with respect to the causes, four different ways.

1. When we undertake it without any just reason, or so much as an apparent motive of advantage, but only from a fierce and brutal fury, which delights in blood and slaughter. But it may be doubted whether we can find an example of so barbarous a war.

VI. 2. When we attack others only for our own interest, without their having done us any injury; that is, when we have no justifying causes; and these wars are, with respect to the aggressor, downright robberies.

VII. 3. When we have some motives, founded on justifying causes, but which have still only an apparent equity, and when well examined, are found at the bottom to be unlawful.

VIII. 4. Lastly, we may say that a war is also unjust, when, though we have good justifying reasons, yet we undertake it from other motives, which have no relation to the injury received; as for instance, through vain glory, or the desire of extending our dominions, &c.

IX. Of these four sorts of war, the undertaking of which includes injustice, the third and last are very common; for there are few nations so barbarous as to take up arms without alledging some sort of justifying reasons. It is not difficult to discover the injustice of the third; as to the fourth, though perhaps very common, it is not so much unjust in itself, as with respect to the view and design of the person, who undertakes it. But it is very difficult to convince him of it, the motives being generally impenetrable, or at least most princes taking great care to conceal them.*

X. From the principles here established we may conclude,

* See the explication of these principles in Budeus's Jurisprud. hist. specim. sect. 28, &c.

that every just war must be made, either to defend ourselves and our property against those, who endeavour to injure us by assaulting our persons, and by taking away or ruining our estates; or to constrain others to yield up to us what they ought to do, when we have a perfect right to require it of them; or lastly to obtain satisfaction for the damages, we have injuriously sustained, and to force those, who did the injury, to give security for their good behaviour.

XI. From this we easily conceive what the causes of war may be. But to illustrate the subject still further, we shall give some examples of the principal unjust causes of war.

1. Thus, for example, to have a just reason for war, it is not sufficient, that we are afraid of the growing power of a neighbour. All we can do, in those circumstances, is innocently to try to obtain *real caution*, that he will attempt nothing against us; and to put ourselves in a posture of defence. But acts of hostility are not permitted, except when necessary; and they are never necessary so long, as we are not morally certain, that the neighbour we dread has not only the power, but also the inclination to attack us. We cannot for instance justly declare war against a neighbour, purely because he orders citadels or fortifications to be erected, which he may sometime or other employ to our prejudice.

XII. 2. Neither does utility alone give the same right as necessity, nor is it sufficient to render a war lawful. Thus, for example, we are not allowed to take up arms with a view to make ourselves masters of a place, which lies conveniently for us, and is proper to cover our frontiers.

XIII. 3. We must say the same of the desire of changing our former settlements, and of removing from marshes and deserts to a more fertile soil.

4. Nor is it less unjust to invade the rights and liberty of a people, under a pretext of their not being so polished in their manners, or of such quick understanding as ourselves. It was therefore unjust in the Greeks to treat those, whom they called *Barbarians*, as their natural enemies, on account of the diversity of their manners, and perhaps because they did not appear to be so ingenious as themselves.

XIV. 5. It would also be an unjust war to take up arms against a nation, in order to bring them under subjection, under pretence of its being their interest to be governed by us. Though a thing be advantageous to a person, yet this does not give us a right to compel him to it. Whoever has the use of reason ought to have the liberty of choosing what he thinks advantageous to himself

XV. We must also observe, that the duties, which nations ought to practise towards each other, are not all equally obligatory, and that their deficiency in this respect does not always lay a foundation for a just war. Among nations, as well as individuals, there are duties attended with a rigorous and perfect obligation, the violation of which implies *an injury properly so called*; and duties of an imperfect obligation, which give to another only an imperfect right. And as we cannot, in a dispute between individuals, have recourse to courts of law to recover what in this second manner is our due; so neither can we, in contests between different powers, constrain them by force of arms.

XVI. We must however except from this rule the cases of necessity, in which the *imperfect* is *changed* into the *perfect right*; so that, in those cases the refusal of him, who will not give us our due, furnishes us with a just reason for war. But every war, undertaken on account of the refusal of what a man is not obliged by the laws of humanity to grant, is unjust.

XVII. To apply these principles we shall give some examples. The right of passing over the lands of another is really founded on humanity, when we design to use that permission only on a lawful account; as when people, expelled their own country, want to settle elsewhere; or when, in the prosecution of a just war, it is necessary to pass through the territories of a neutral nation, &c. But this is only an office of humanity, which is not due to another in virtue of a perfect and rigorous right, and the refusal of it does not authorise a nation to challenge it in a forcible manner.

XVIII. Grotius however, examining this question, pretends, "that we are not only obliged to grant a passage over our lands "to a small number of men unarmed, and from whom we have

"consequently nothing to fear; but moreover that we cannot "refuse it to a large army, notwithstanding the just apprehension "we may have, that this passage will do us a considerable injury, which is likely to arise either from that army itself, or "from those, against whom it marches; provided, continues "he, 1. that this passage is asked on a just account. 2. That "it is asked before an attempt is made to pass by force."

XIX. This author then pretends, that under those circumstances, the refusal authorises us to have recourse to arms, and that we may lawfully procure by force, what we could not obtain by favor, even though the passage may be had elsewhere by taking a larger circuit. He adds, "That the suspicion of danger from the passing of a great number of armed men is not "a sufficient reason to refuse it, because good precautions may "be taken against it. Neither is the fear of provoking that "prince, against whom the other marches his army, a sufficient "reason for refusing him passage, if the latter has a just reason "for undertaking the war."

XX. Grotius founds his opinion on this reason, that the establishment of property was originally made with the tacit reservation of the right of using the property of another in time of need, so far as it can be done without injuring the owner.

XXI. But I cannot embrace the opinion of this celebrated writer; for, 1. whatever may be said, it is certain, that the right of passing through the territories of another is not a perfect right, the execution of which can be rigorously demanded. If a private person is not obliged to suffer another to pass through his ground, much less is a nation obliged to grant a passage to a foreign army, without any compact or concession intervening.

XXII. 2. The great inconveniences, which may follow such a permission, authorizes this refusal. By granting such a passage, we run a risk of making our own country the seat of war. Besides, if they, to whom we grant this passage, are repulsed and vanquished, let the reasons they had for making war be ever so just, yet will not the enemy revenge himself upon us, who did not hinder those troops from invading him? But farther, suppose that we live in friendship with both the princes, who are at

war, we cannot favor one to the prejudice of the other, without giving this other a sufficient reason to look upon us as enemies, and as defective in that part of our duty, which we owe to our neighbours. It would be in vain, on this occasion, to distinguish between a just and an unjust war, pretending that the latter gives a right of refusing the passage, but the former obliges us to grant it. This distinction does not remove the difficulty; for, besides that it is not always easy to decide whether a war be just or unjust, it is a piece of rashness to thrust in our arbitration between two armed parties, and to intermeddle with their differences.

XXIII. 3. But is there nothing to fear from the troops, to whom the passage is granted? The abettors of the contrary opinion agree there is, for which reason they allow, that many precautions ought to be observed. But whatever precautions we may take, none of them can secure us against all events; and some evils and losses are irreparable. Men, who are always in arms, are easily tempted to abuse them, and to commit outrages, especially if they be numerous, and find an opportunity of making a considerable booty. How often have we seen foreign armies ravage and appropriate to themselves the estates of a people, who have called them to their assistance? Nor have the most solemn treaties and oaths been able to deter them from this black perfidiousness.* What then may we expect from those, who are under no such strict engagement?

XXIV. 4. Another observation we may make, which is of great use in politics, that almost all states have this in common, that the further we advance into the heart of a country, the weaker we find it. The Carthaginians, otherwise invincible, were vanquished near Carthage by Agathocles and Scipio. Hannibal affirmed, that the Romans could not be conquered except in Italy. It is therefore dangerous to lay open this secret to a multitude of foreigners, who, having arms at hand, may take advantage of our weakness, and make us repent our imprudence.

XXV. 5. To this we must add, that in every state there are almost always mutinous and turbulent spirits, who are ready to stir up strangers either against their fellow citizens, their sove-

* See Just. lib. iv. cap. 4 & 8 and Liv. lib. vii. cap. 38.

reign, or their neighbours. These reasons sufficiently prove, that all the precautions, which can be taken, cannot secure us from danger.

6. Lastly we may add the example of a great many nations, who have been very ill requited for letting foreign troops pass through their country.

XXVI. We shall finish the examination of this question by making two remarks. The first is, that it is evident from the whole of what has been said, that this is a matter of prudence; and that, though we are not obliged to grant a passage to foreign troops, and the safest way is to refuse it, yet when we are not strong enough to resist those, who want the pass at any rate, and by resisting we must involve ourselves in a troublesome war, we ought certainly to grant a passage; and the necessity, to which we are reduced, is sufficient justification to the prince, whose territories those troops are going to invade.

XXVII. My second remark is, that, if we suppose on one hand, that the war, which the prince, who demands a passage through our country, makes, is just and necessary, and, on the other, that we have nothing to fear either from him, who is to pass, or him, against whom he marches; we are then indispensably obliged to grant a passage. For if the law of nature obliges every man to assist those, whom he sees manifestly oppressed, when he can do it without danger and with hopes of success, much less ought he to be a hinderance to such, as undertake their own defence.

XXVIII. By following the principles here established, we may judge of the right of transporting merchandizes through the territories of another. This is also an imperfect right, and a duty of humanity, which obliges us to grant it to others; but the obligation is not rigorous, and the refusal cannot be a just reason for war.

XXIX. Truly speaking the laws of humanity indispensably oblige us to grant a passage to such foreign commodities, as are absolutely necessary for life, which our neighbours cannot procure by themselves, and with which we are not able to furnish them. But, except in this case, we may have good reasons for hindering foreign commodities from passing through our coun-

try. Too great a resort for strangers is sometimes dangerous to a state; and besides, why should not a sovereign procure to his own subjects that profit, which would otherwise be made by foreigners, by means of the passage granted them?

XXX. It is not however contrary to humanity to require toll or custom for foreign commodities, to which a passage is granted. This is a just reimbursement for the expenses, the sovereign is obliged to be at in repairing the high roads, bridges, harbors, &c.

XXXI. We must reason in the same manner in regard to commerce in general between different states. The same may be said of the right of being supplied with wives by our neighbours; a refusal on their side, though there be great plenty of women among them does not authorise us to declare war.

XXXII. We shall here subjoin something concerning wars, undertaken on account of religion. The law of nature, which permits a man to defend his life, his substance, and all the other advantages, which he enjoys, against the attacks of an unjust aggressor, certainly grants him the liberty also of defending himself against those, who would, as it were by force, deprive him of his religion, by hindering him from professing that, which he thinks the best, or by constraining him to embrace that, which he thinks to be false.

XXXIII. In a word, religion is one of the greatest blessings man can enjoy, and includes his most essential interests. Whoever opposes him in this respect declares himself his enemy; and consequently he may justly use forcible methods to repel the injury, and to secure himself against the evil intended him. It is therefore lawful, and even just, to take up arms, when we are attacked for the cause of religion.

XXXIV. But, though we are allowed to defend ourselves in the cause of religion, we are not permitted to make war in order to propagate that, which we profess, and to constrain those, who have some principle or practice different from ours. The one is a necessary consequence of the other. It is not lawful to attack him, who has a right to defend himself. If the defensive war is just, the offensive must be criminal. The very nature of religion does not permit, that violent means should

be used for its propagation; it consists in internal persuasion. The right of mankind, in regard to the propagation of religion, is to inform and instruct those, who are in error, and to use the soft and gentle methods of conviction. Men must be persuaded, and not compelled. To act otherwise is to commit a robbery on them; a robbery so much the more criminal, as those, who commit it, endeavour to justify themselves by sacred authority. There is therefore no less folly, than impiety, in such a conduct.

XXXV. In particular nothing is more contrary to the spirit of Christianity, than to employ the force of arms for the propagation of our holy religion. Christ, our divine master, instructed mankind, but never treated them with violence. The Apostles followed his example; and the enumeration, which St. Paul makes of the arms he employed for the conversion of mankind, is an excellent lesson to Christians.

XXXVI. So far is a simple difference of opinion, in matters of religion from being a just reason for pursuing, by force of arms, or disturbing in the least those, whom we think in an error; that, on the contrary, such as act in this manner, furnish others with a just reason for making war against them, and of defending those, whom they unjustly oppress. Upon which occasion the following question occurs, *Whether protestant princes may not, with a good conscience, enter into a confederacy to destroy the Inquisition, and oblige the powers, who suffer it in their dominions, to disarm that cabal, under which Christianity has so long groaned, and which, under a false pretence to zeal and piety, exercises a tyranny most horrible in itself, and most contrary to human nature?* Be that as it may, it is at least certain, that never would any hero have subdued monsters more furious and destructive to mankind, than he who could accomplish the design of purging the earth of these wicked men, who so impudently and cruelly abuse the specious show of religion, only to procure wherewith to live in luxury and idleness, and to make both princes and subjects dependant on them.

XXXVII. These are the principal remarks, which occur on the causes of war. To which let us add, that as we ought not

* 2 Cor. chap. vi. ver. 4, &c. and chap. x. ver. 4.

to make war, which of itself is a very great evil, but to obtain a solid peace, it is absolutely necessary to consult the rules of prudence before we undertake it, however just it may otherwise appear. We must, above all things, exactly weigh the good or evil, which we may bring upon ourselves by it. For, if in making war there is reason to fear, that we shall draw greater evils on ourselves, or those, who belong to us, than the good we can propose from it; it is better to put up with the injury, than to expose ourselves to more considerable evils, than that, for which we seek redress by arms.

XXXVIII. In the circumstances here mentioned we may lawfully make war, not only for ourselves, but also for others; provided that he, in whose favour we engage, has just reason to take up arms, and that we are likewise under some particular tie or obligation to him, which authorises us to treat as enemies those, who have done us no injury.

XXXIX. Now among those, whom we may and ought to defend, we must give the first place to such, as depend on the defender; that is, to the subjects of the state; for it is principally with this view of protection, that men, before independent, incorporated themselves into a civil society. Thus the Gibeonites having submitted themselves to the government of the Israelites, the latter took up arms on their account, under the command of Joshua. The Romans also proceeded in the same manner. But sovereigns in these cases ought to observe the maxim we have established in sect. 37. They ought to beware, in taking up arms for some of their subjects, not to bring a greater inconveniency on the body of the state. The duty of the sovereign regards first and principally the interest of the whole, rather than that of a part; and the greater the part is, the nearer it approaches to the whole.

XL. 2. Next to subjects come our allies, whom we are expressly engaged by treaty to assist in time of need; and this, whether they have put themselves intirely under our protection, and so depend upon it; or whether assistance be agreed upon for mutual security.

XLI. But the war must be justly undertaken by our ally; for we cannot innocently engage to help any one in a war, which is manifestly unjust. Let us add here, that we may,

even without prejudice to the treaty, defend our own subjects preferably to our allies, when there is no possibility of assisting them both at the same time; for the engagements of a government to its subjects always supersede those, into which it enters with strangers.

XLII. As to what Grotius says, that we are not obliged to assist an ally, when there is no hope of success; it is to be understood in this manner. If we see that our united forces are not sufficient to oppose the enemy, and that our ally, though able to treat with him on tolerable terms is yet obstinately bent to expose himself to certain ruin; we are not obliged, by the treaty of alliances, to join with him in so extravagant and desperate an attempt. But then it is also to be considered, that alliances would become useless, if, in virtue of this union, we were not obliged to expose ourselves to some danger, or to sustain some loss in the defence of an ally.

XLIII. Here it may be enquired, when several of our allies want assistance, which ought to be helped first, and preferable to the rest? Grotius answers, that, when two allies unjustly make war upon each other, we ought to succour neither of them; but if the cause of one ally be just, we must not only assist him against strangers, but also against another of our allies, unless there be some particular clause in a treaty, which does not permit us to defend the former against the latter, even though the latter has committed the injury. In fine, that if several of our allies enter into a league against a common foe, or make war separately against particular enemies, we must assist them all equally, and according to treaty; but when there is no possibility of assisting them all at once, we must give the preference to the oldest confederate.

XLIV. 3. Friends, or those, with whom we are united by particular ties of kindness and affection, hold the third rank. For though we have not promised them assistance, determined by a formal treaty; yet the nature of friendship itself implies a mutual engagement to help each other, so far as the stricter obligations the friends are under will permit; and the concern for each other's safety ought to be much stronger, than that, which is demanded by the simple connexion of humanity.

XLV. I say that we may take up arms for our friends, who are engaged in a just war; for we are not under a strict obligation to assist them; and this condition ought to be understood, if we can do it easily, and without any great inconvenience to ourselves.

XLVI. 4. In fine we may affirm, that the single relation, in which all mankind stand to each other, in consequence of their common nature and society, and which forms the most extensive connexion, is sufficient to authorise us in assisting those, who are unjustly oppressed; at least if the injustice be considerable, and manifest, and the party injured call us to its assistance; so that we act rather in its name, than in our own. But even here we must make this remark, that we have a right to succor the distressed purely from humanity, but that we are not under a strict obligation of doing it. It is a duty of imperfect obligation, which binds us only so far, as we can practise it, without bringing a considerable inconvenience upon ourselves; for, all circumstances being equal, we may and even ought to prefer our own preservation to that of another.

XLVII. It is another question, whether we can undertake a war in defence of the subjects of a foreign prince against his invasions and oppressions, merely from the principle of humanity? I answer, that this is permitted only in cases, where the tyranny is risen to such a height, that the subjects themselves may lawfully take up arms, to shake off the yoke of the tyrant, according to the principles already established.

XLVIII. It is true, that since the institution of civil societies, the sovereign has acquired a peculiar right over his subjects, in virtue of which he can punish them, and no other power has any business to interfere. But it is no less certain, that this right hath its bounds, and that it cannot be lawfully exercised, except when the subjects are really culpable, or at least when their innocence is dubious. Then the presumption ought to be in favor of the sovereign, and a foreign power has no right to intermeddle with what passes in another state.

XLIX. But if the tyranny be arrived at its greatest height, if the oppression be manifest as when a Busiris or Phalaris oppress their subjects in so cruel a manner, as must be condemned by

every reasonable man living; we cannot refuse the subjects, thus oppressed, the protection of the laws of society. Every man, as such, has a right to claim the assistance of other men, when he is really in necessity; and every one is obliged to give it him, when he can, by the laws of humanity. Now it is certain, that we neither do, nor can renounce those laws, by entering into society, which could never have been established to the prejudice of human nature; though we may be justly suppposed to have engaged not to implore a foreign aid for slight injuries, or even for great ones, which affect only a few persons.

But when all the subjects, or a considerable part of them, groan under the oppression of a tyrant, the subjects, on the one hand, reenter into the several rights of natural liberty, which authorizes them to seek assistance wherever they can find it; and, on the other hand, those, who are in a condition of giving it them, without any considerable damage to themselves, not only may, but ought to do all they can to deliver the oppressed from the single consideration of piety and humanity.

L. It appears indeed, from ancient and modern history, that the desire of invading the states of others is often covered by those pretexts; but the bad use of a thing, does not hinder it from being just. Pirates navigate the seas, and robbers wear swords, as well as other people.

CHAP. III.

Of the different kinds of war.

I. BESIDES the division abovementioned of war into just and unjust, there are several others, which it is proper now to consider. And first war is distinguished into *offensive* and *defensive*.

II. Defensive wars are those, undertaken for the defence of our persons, or the preservation of our properties. Offensive wars are those, which are made to constrain others to give us our due, in virtue of a perfect right we have to exact it of them; or to obtain satisfaction for a damage unjustly done us, and to force them to give caution for the future.

III. 1. We must therefore take care not to confound this

with the former distinction; as if every defensive war were just, and, on the contrary, every offensive war unjust. It is the present custom to excuse the most unjust wars, by saying they are purely defensive. Some people think, that all unjust wars ought to be called offensive, which is not true; for if some offensive wars be just, of which there is no doubt, there are also defensive wars unjust; as when we defend ourselves against a prince, who has had sufficient provocation to attact us.

IV. 2. Neither are we to believe, that he, who first injures another, begins by that an offensive war, and that the other, who demands satisfaction for the injury, is always upon the defensive. There are a great many unjust acts, which may kindle a war, and yet are not the war; as the ill treatment of a prince's ambassador, the plundering of his subjects, &c. If therefore we take up arms to revenge such an unjust act, we commence an offensive, but a just war; while the prince, who has done the injury, and will not give satisfaction, makes a defensive, but an unjust war. An offensive war is therefore unjust only, when it is undertaken without a lawful cause; and then the defensive war, which on other occasions might be unjust, becomes just.

V. We must therefore affirm in general, that the first, who takes up arms, whether justly or unjustly, commences an offensive war; and he, who opposes him, whether with or without a reason, begins a defensive war. Those, who look upon the word *offensive war* to be an odious term, as always implying something unjust; and who on the contrary, consider a defensive war as inseparable from equity, confound ideas, and perplex a thing which of itself seems to be sufficiently clear. It is with princes as with private persons. The plaintiff, who commences a suit at law, is sometimes in the wrong, and sometimes in the right. It is the same with the defendant. It is wrong to refuse to pay a sum, which is justly due; and it is right to forbear paying what we do not owe.

VI. In the third place, Grotius distinguishes war into *private*, *public*, and *mixed*. *Public war* he calls that, which is made on both sides by the authority of the civil power. *Private war*, that which is made between private persons, without any public authority; and lastly *mixed war*, that, which, on one side is carried on by public authority, and on the other, by private persons.

VII. We may observe concerning this division, that, if we take the word *war* in the most general and extensive sense, and understand by it *all taking up arms with a view to decide a quarrel*, in contradistinction to the way of deciding a difference by recourse to a common judge, then this distinction may be admitted; but custom seems to explode it, and has restrained the signification of the word *war* to that, carried on between sovereign powers. In civil society private persons have not a right to make war. And as for the state of nature, we have already treated of the right, which men have in that state to defend and preserve their persons and properties; so that as we are here treating only of the right of sovereigns, with regard to each other, it is properly public, and not private war, that falls under our present consideration.

VIII. 4. War is also distinguished into *solemn according to the laws of nations*, and *not solemn*. To render a war solemn two things are requisite; the first, that it be made by the authority of the sovereign; the second, that it be accompanied with certain formalities, as a formal declaration, &c. but of this we shall treat more fully in its proper place. War not solemn is that, which is made either without a formal declaration, or against mere private persons. We shall here only hint at this division, deferring a more particular examination of it, and an enquiry into its effects, till we come to treat of the formalities, which usually precede war.

IX. But a question is moved, relating to this subject, which is, whether a magistrate, properly so called, and as such, has power of making war of his own accord? Grotius answers, that, judging independently of the civil laws, every magistrate seems to have as much right, in case of resistance, to take up arms in order to exercise his jurisdiction, and to see his commands executed, as to defend the people, entrusted to his care. Puffendorf, on the contrary, takes the negative, and passes censure on the opinion of Grotius.

X. But it is easy to reconcile these two authors, the dispute

between them being merely about words. Grotius fixes a more vague and general idea to the term *war*.* According to him therefore, when a subordinate magistrate takes up arms to maintain his authority, and to reduce those to reason, who refuse to submit to him, he is supposed to act with the approbation of the sovereign; who, by entrusting him with the share in the government of the state, has at the same time invested him with the power necessary to exercise it. And thus the question is only, whether every magistrate, as such, need, on this occasion, an express order from the sovereign; and whether the constitution of civil societies in general require it, independently of the laws of each particular state?

XI. Now if a magistrate can have recourse to arms for the reduction of one person, of two, ten, or twenty, who either refuse to obey him, or attempt to hinder the exercise of his jurisdiction, why may he not use the same means against fifty, a hundred, a thousand? &c. The greater the number the disobedient, the more he will have occasion for force to overcome their resistance. Now this is what Grotius includes under the term *war*.

XII. Puffendorf agrees to this in the main; but he pretends that this coercive power, which belongs to a magistrate over disobedient subjects, is not a right of war; war seeming to be intirely between equals, or at least, such as pretend to equality. The idea of Puffendorf is certainly more regular, and agreeable to custom; but it is evident, that the difference between him and Grotius consists only in the greater or less extent, which each of them gives to the word *war*.

XIII. If it be objected, it is dangerous to leave so much power to a subordinate magistrate; this may be true; but then it proves only, that the prudence of legislators requires they should set bounds in this respect to the power of magistrates, in order to prevent an inconveniency, which should otherwise arise from the institution of magistracy.

XIV. But to judge of the power of the magistrates, or of generals and leaders, in respect to war, properly so called, and which is carried on against a foreign enemy, we need only to

* See above, sect. vii.

attend to their commissions; for it is evident, that they cannot lawfully undertake any act of hostility of their own head, and without a formal order of the sovereign, at least reasonably presumed, in consequence of particular circumstances.

XV. Thus, for example, a general, sent upon an expedition with an unlimited authority, may act against the enemy offensively, as well as defensively, and in such a manner, as he shall judge most advantageous; but he can neither levy a new war, nor make peace of his own head. But if his power be limited, he ought never to pass the bounds prescribed, unless he is unavoidably reduced to it by the necessity of selfdefence; for whatever he does in that case is supposed to be with the consent and approbation of the sovereign. Thus, if an admiral has orders to be upon the defensive, he may, notwithstanding such a restraint, break in upon the enemy's fleet, and sink and burn as many of their ships, as he can, if they come to attack him. All, that he is forbidden, is to challenge the enemy first.

XVI. In general the governors of provinces and cities, if they have troops under their command, may by their own authority defend themselves against an enemy, who attacks them; but they ought not to carry the war into a foreign country, without an express order from their sovereign.

XVII. It was in virtue of this privilege, arising from necessity, that Lucius Pinarius,* governor of Enna in Sicily for the Romans, upon certain information, that the inhabitants designed to revolt to the Carthaginians, put them all to the sword, and thus preserved the place. But, except in the like case of necessity, the inhabitants of a town have no right to take up arms in order to obtain satisfaction for those injuries, which the prince neglects to revenge.

XVIII. A mere presumption of the will of the sovereign would not even be sufficient to excuse a governor, or any other officer, who should undertake a war, except in case of necessity, without either a general or particular order. For it is not sufficient to know what part the sovereign would probably act, if he were consulted, in such a particular posture of affairs; but it should rather be considered in general, what it is probable a

* Livy, lib. xxi. cap. xviii.

prince would desire should be done without consulting him, when the matter will bear some delay, and the affair is dubious. Now certainly sovereigns will never consent, that their ministers should, whenever they think proper, undertake without their order, a thing of such importance, as an offensive war, which is the proper subject of the present inquiry.

XIX. In these circumstances, whatever part the sovereign would have thought proper to act, if he had been consulted; and whatever success the war, undertaken without his orders, may have had; it is left to the sovereign whether he will ratify, or condemn the act of his minister. If he ratifies it, this approbation renders the war solemn, by reflecting back, as it were, an authority upon it, so that it obliges the whole commonwealth. But if the sovereign should condemn the act of the governor, the hostilities committed by the latter ought to pass for a sort of robbery, the fault of which by no means affects the state, provided the governor is delivered up, or punished according to the laws of the country, and proper satisfaction be made for the damages sustained.

XX. We may further observe, that in civil societies, when a particular member has done an injury to a stranger, the governor of the commonwealth is sometimes responsible for it, so that war may be declared against him on that account. But to ground this kind of imputation, we must necessarily suppose one of these two things, sufferance, or reception; viz. either that the sovereign has suffered this harm to be done to the stranger, or that he afforded a retreat to the criminal.

XXI. In the former case it must be laid down as a maxim, that a sovereign, who, knowing the crimes of his subjects, as for example, that they practise piracy on strangers; and being also able and obliged to hinder it, does not hinder it, renders himself criminal, because he has consented to the bad action, the commission of which he has permitted, and consequently furnished a just reason of war.

XXII. The two conditions abovementioned, I mean the knowledge and sufferance of the sovereign, are absolutely necessary, the one not being sufficient without the other, to communicate any share in the guilt. Now it is presumed, that a sovereign knows what his subjects openly and frequently commit; and as to his power of hindering the evil, this likewise is always presumed, unless the want of it be clearly proved.

XXIII. The other way, in which a sovereign renders himself guilty of the crime of another, is by allowing a retreat and admittance to the criminal, and, screening him from punishment. Puffendorf pretends, that if we are obliged to deliver up a criminal, who takes shelter among us, it is rather in virtue of some treaty on this head, than in consequences of a common and indispensable obligation.

XXIV. But Puffendorf I think has, without sufficient reasons, abandoned the opinion of Grotius, which seems to be better founded. The principles of the latter, in regard to the present question, may be reduced to these following.

1. Since the establishment of civil societies, the right of punishing public offences, which every person, if not chargeable himself with such a crime, had in the state of nature, has been transferred to the sovereign, so that the latter alone hath the privilege of punishing, as he thinks proper, those transgressions of his subjects, which properly interest the public.

XXV. But this right of punishing crimes is not so exclusively theirs, but that either public bodies or their governors have a right to procure the punishment of them in the same manner, as the laws of particular countries allow private people the prosecution of crimes before the civil tribunal.

XXVI. 3. This right is still stronger with respect to crimes, by which they are directly injured, and which they have a perfect right of punishing, for the support of their honor and safety. In such circumstances the state, to which the criminal retires, ought not to obstruct the right, that belongs to the other power.

XXVII. 4. Now as one prince does not generally permit another to send armed men into his territories, upon the score of exacting punishment (for this would indeed be attended with terrible inconveniences) it is reasonable the sovereign, in whose dominions the offender lives, or has taken shelter, should either punish the criminal according to his demerits, or deliver him up to be punished at the discretion of the injured sovereign.

This is that delivering up, of which we have so many examples in history.

XXVIII. 5. The principles here laid down concerning the obligation of punishing or delivering up, regard not only the criminals, who have always been subjects of the government they now live under, but also those, who after the commission of a crime, have taken shelter in the country.

XXIX. 6. In fine we must observe, that the right of demanding fugitive delinquents to punishment has not for some ages last past been insisted upon by sovereigns, in most parts of Europe, except in crimes against the state, or those of a very heinous nature. As to less crimes, they are connived at on both sides, unless it is otherwise agreed on by some particular treaty.

XXX. Besides the kinds of war, hitherto mentioned, we may also distinguish them into *perfect* and *imperfect*. A perfect war is that, which entirely interrupts the tranquillity of the state, and lays a foundation for all possible acts of hostility. An imperfect war, on the contrary, is that, which does not entirely interrupt the peace, but only in certain particulars, the public tranquillity being in other respects undisturbed.

XXXI. This last species of war is generally called reprisals, of the nature of which we shall give here some account. By reprisals then we mean *that imperfect kind of war, or those acts of hostility, which sovereigns exercise against each other, or, with their consent, their subjects, by seizing the persons or effects of the subjects of a foreign commonwealth, that refuseth to do us justice; with a view to obtain security, and to recover our right, and in case of refusal, to do justice to ourselves, without any other interruption of the public tranquillity.*

XXXII. Grotius pretends, that reprisals are not founded on the law of nature and necessity, but only on a kind of arbitrary law of nations, by which most of them have agreed, that the goods belonging to the subjects of a foreign state should be a pledge or security, as it were, for what that state, or the governor of it, might owe us, either directly and in their own names, or by rendering themselves responsible for the actions of others, upon refusing to administer justice.

XXXIII. But this is far from being an arbitrary right, founded upon a pretended law of nations, whose existence we cannot prove, depending on the greater or less extent of custom no way binding in the nature of a law. The right we here speak of is a consequence of the constitution of civil societies, and an application of the maxims of the law of nature to that constitution.

XXXIV. During the independence of the state of nature, and before the institution of civil government, if a person had been injured, he could come upon those only, who had done the wrong, or upon their accomplices; because there was then no tie between men, in virtue of which a person might be deemed to have consented, in some manner, to what others did even without his participation.

XXXV. But since civil societies have been formed, that is to say, communities, whose members are all united together for their common defence, there has necessarily arisen thence a conjunction of interests and wills; which is the reason, that as the society or the powers, which govern it, engage to defend each other against every insult; so each individual may be deemed to have engaged to answer for the conduct of the society, of which he is a member, or of the powers, which govern it.

XXXVI. No human establishment can supersede the obligation of that general and inviolable law of nature, *that the damage we have done to another should be repaired*; except those, who are thereby injured, have manifestly renounced their right of demanding reparation. And when such establishments hinder those, who are injured, from obtaining satisfaction so easily, as they might without them, this difficulty must be made up, by furnishing the persons interested with all the other possible methods of doing themselves justice.

XXXVII. Now it is certain, that societies, or the powers, which govern them, by being armed with the force of the whole body, are sometimes encouraged to laugh with impunity at strangers, who come to demand their due; and that every subject contributes, one way or other, to enable them to act in this manner; so that he may be supposed in some measure to consent to it. But, if he does not in reality consent, there is after all

no other manner of facilitating, to injured strangers, the prosecution of their rights, which is rendered difficult by the united force of the whole body, than to authorise them to come upon all those, who are members of it.

XXXVIII. Let us therefore conclude, that, by the constitution of civil societies, every subject, so long as he continues such, is responsible to strangers for the conduct of the society, or of him, who governs it; with this clause however, that he may demand indemnification, when there is any fault or injustice on the part of his superiors. But if it should be any man's misfortune to be disappointed of this indemnification, he must look upon it as one of those inconveniences, which, in a civil state, the constitution of human affairs renders almost inevitable. If to all these we add the reasons, alledged by Grotius, we shall plainly see, that there is no necessity for supposing a tacit consent of the people to found the right of reprisals.

XXXIX. As reprisals are acts of hostility, and often the prelude or forerunner of a complete and perfect war, it is plain that none but the sovereign can lawfully use this right, and that the subjects can make no reprisals, but by his order and authority.

XL. Besides it is proper, that the wrong or injustice done us, and which occasions the reprisals, should be clear and evident, and that the thing in dispute be of great consequence. For if the injury be dubious, or of no importance, it would be equally unjust and dangerous to proceed to this extremity, and to expose ourselves to all the calamities of an open war. Neither ought we to come to reprisals, before we have tried, by the ordinary means, to obtain justice for the injury committed. For this purpose we must apply to the prince, whose subjects have done us the injustice; and if the prince takes no notice, or refuses satisfaction, we may then make reprisals, in order to obtain it.

XLI. In a word, we must not have recourse to reprisals, except when all the ordinary means of obtaining satisfaction have failed; so that, for instance, if a subordinate magistrate has refused us justice, we are not permitted to use reprisals before we apply to the sovereign himself, who will perhaps grant us satisfaction. In such circumstances, we may therefore either detian the subjects of a foreign state, if they withhold ours; or we

may seize their goods and effects. But whatever just reason we may have to make reprisals, we can never directly, and for that reason alone, put those to death, whom we have seized upon, but only secure them, and not use them ill, till we have obtained satisfaction; so that, during all that time, they are to be considered as hostages.

XLII. In regard to the goods, seized by the right of reprisals, we must take care of them till the time, in which satisfaction ought to be made, is expired; after which we may adjudge them to the creditor, or sell them for the payment of the debt; returning to him, from whom they were taken, the overplus, when all charges are deducted.

XLIII. We must also observe, that it is not permitted to use reprisals, except with regard to subjects, properly so called, and their effects; for as to strangers, who do but pass through a country, or only come to make a short stay in it, they have not a sufficient connexion with the state, of which they are only members but for a time, and in an imperfect manner; so that we cannot indemnify ourselves by them, for the loss we have sustained by any native of the country, and by the refusal of the sovereign to render us justice. We must further except ambassadors, who are sacred persons, even in the height of war. But as to women, clergymen, men of letters, &c. the law of nature grants them no privilege in this case, if they have not otherwise acquired it by virtue of some treaty.

XLIV. Lastly, some political writers distinguish those wars, which are carried on between two or more sovereigns, from those of the subjects against their governors. But it is plain, that, when subjects take up arms against their prince, they either do it for just reasons, and according to the principles established in this work, or without a just and lawful cause. In the latter case, it is rather a revolt or insurrection, than a war, properly so called. But if the subjects have just reason to resist the sovereign, it is strictly a war; since, in such a crisis, there are neither sovereign nor subjects, all dependance and obligation having ceased. The two opposite parties are then in a state of nature and equality, trying to obtain justice by their own proper strength, which constitutes what we understand properly by the term *war*.

CHAP. IV.

Of those things, which ought to precede war.

I. HOWEVER just reason we may have to make war, yet, as it inevitably brings along with it an incredible number of calamities, and oftentimes acts of injustice, it is certain, that we ought not to proceed too easily to a dangerous extremity, which may perhaps prove fatal to the conqueror himself.

II. The following are the measures, which prudence directs to be observed in these circumstances.

1. Supposing the reason of the war just in itself, yet the dispute ought to be about something of great consequence; since it is better even to relinquish part of our right, when the thing is not considerable, than to have recourse to arms to defend it.

2. We ought to have at least a probable appearance of success; for it would be a criminal temerity, to expose ourselves to certain destruction, and to run into a greater, in order to avoid a lesser evil.

3. Lastly, there should be a real necessity for taking up arms; that is, we ought not to have recourse to force; but when we can employ no milder method of recovering our right, or of defending ourselves from the evils, with which we are menaced.

III. These measures are agreeable not only to the principles of prudence, but also to the fundamental maxims of sociability, and the love of peace; maxims of no less force with respect to nations, than individuals. By these a sovereign must therefore be necessarily directed; justice obliges him to it, in consequence of the very nature and end of government. For, as he ought to take particular care of the state, and of his subjects, he should not expose them to the evils, with which war is attended, except in the last extremity, and when there is no other expedient left but that of arms.

IV. It is not therefore sufficient, that the war be just in itself, with respect to the enemy; it must also be so with respect to ourselves and our subjects. Plutarch informs us, "that, "among the ancient Romans, when the Feciales had determined, that a war might be justly undertaken, the senate afterwards examined whether it would be advantageous to engage "in it."

V. Now among the methods of deciding differences between nations without a war, there are three most considerable. The first is an amicable conference between the contending parties; with respect to which Cicero judiciously observes, "that this "method of terminating a difference by a discussion of reasons "on both sides is peculiarly agreeable to the nature of man; "that force belongs to brutes, and that we never ought to have "recourse to it, but when we cannot redress our grievances by "any other method."

VI. The second way of terminating a difference between those who have not a common judge, is to put the matter to arbitration. The more potent indeed often neglect this method, but it ought certainly to be followed by those, who have any regard to justice and peace; and it is a way, that has been taken by great princes and people.

VII. The third method, in fine, which may be sometimes used with success, is that of casting lots. I say we may sometimes use this way; for it is not always lawful to refer the issue of a difference, or of a war, to the decision of lots. This method cannot be taken, except when the dispute is about a thing, in which we have a full property, and which we may renounce whenever we please. But in general, the obligation of the sovereign to defend the lives, the honor, and the religion of his subjects, as also his obligation to maintain the dignity of the state, are of too strong a nature to suffer him to renounce the most natural and most probable means of his own security, as well as that of the public, and to refer his case to chance, which in its nature is entirely precarious.

VIII. But if upon due examination he, who has been unjustly attacked, finds himself so weak, that he has no probability of making any considerable resistance, he may reasonably decide the difference by way of lot, in order to avoid a certain, by exposing himself to an uncertain danger; which, in this case, is the least of two inevitable evils.

IX. There is also another method, which has some relation

to lots. This consists in single combats, which have often been used to terminate such differences, as were likely to produce a war between two nations. And indeed, to prevent a war, and its concomitant evils, I see no reason, that can hinder us from referring matters to a combat between a certain number of men, agreed upon by both parties. History furnishes us with several examples of this kind, as that of Turnus and Eneas, Menelaus and Paris, the Horatii and the Curiatii.

X. It is a question of some importance, to know whether it be lawful thus to expose the interest of a whole state to the fate of those combats? It appears on the one hand, that by such means we spare the effusion of human blood, and abridge the calamities of war; on the other hand, it promiseth fairer, and looks like a better venture, to stand the shock even of a bloody war, than by one blow to risk the liberty and safety of the state by a decisive combat; since, after the loss of one or two battles, the war may be set on foot again, and a third perhaps may prove successful.

XI. However it may be said, that, if otherwise there is no prospect of making a good end of a war, and if the liberty and safety of the state are at stake; there seems to be no reason against taking this step, as the least of two evils.

XII. Grotius, in examining this question, pretends that these combats are not reconcileable to internal justice, though they are approved by the external right of nations; and that private persons cannot innocently expose their lives, of their own accord, to the hazard of a single combat, though such a combat may be innocently permitted by the state or sovereign, to prevent greater mischiefs. But it has been justly observed, that the arguments, used by this great man, either prove nothing at all, or prove at the same time, that it is never lawful to venture one's life in any combat whatever.

XIII. We may even affirm, that Grotius is not very consistent with himself, since he permits this kind of combats, when otherwise there is the greatest probability, that he, who prosecutes an unjust cause, will be victorious, and thereby destroy a great number of innocent persons. For this exception evinces, that the thing is not bad in itself, and that all the harm, which

can be in this case, consists in exposing our own life, or that of others, without necessity, to the hazard of a single combat. The desire of terminating, or preventing a war, which has always terrible consequences, even to the victorious, is so commendable, that it may excuse, if not entirely justify those, who engage either themselves or others even imprudently in a combat of this kind. Be this as it may, it is certain that in such a case those, who combat by the order of the state, are entirely innocent; for they are no more obliged to examine whether the state acts prudently or not, than when they are sent upon an assault, or to fight a pitched battle.

XIV. We must however observe, that it was a foolish superstition in those people, who looked upon a set combat, as a lawful method of determining all differences, even between individuals, from a persuasion, that the Deity gave always the victory to the good cause; for which reason they called this kind of combat *the judgment of God.*

XV. But if after having used all our endeavours to terminate differences in an amicable manner, their remains no further hope, and we are absolutely constrained to undertake a war, we ought first to declare it in form.

XVI. This declaration of war, considered in itself, and independently of the particular formalities of each people, does not simply belong to the law of nations, taking this word in the sense of Grotius, but to the law of nature itself. Indeed prudence and natural equity equally require, that, before we take up arms against any state, we should try all amicable methods to avoid coming to such an extremity. We ought then to summon him, who has injured us, to make a speedy satisfaction, that we may see whether he will not have regard to himself, and not put us to the hard necessity of pursuing our right by force of arms.

XVII. From what has been said it follows, that this declaration takes place only in *offensive wars;* for, when we are actually attacked, that alone gives us reason to believe, that the enemy is resolved not to listen to an accommodation.

XVIII. From this it also follows, that we ought not to commit acts of hostility immediately upon declaring war, but should

wait so long at least, as we can without doing ourselves a prejudice, until he, who has done us the injury, plainly refuses to give us satisfaction, and has put himself in a condition to receive us with bravery and resolution; otherwise the declaration of war would be only a vain ceremony. For we ought to neglect no means to convince all the world, and even the enemy himself, that it is only absolute necessity, that obliges us to take up arms for the recovery or defence of our just rights; after having tried every other method, and given the enemy full time to consider.

XIX. Declarations of war are distinguished into *conditional* and *absolute*. The *conditional* is that, which is joined with a solemn demand of restitution, and with this condition, that if the injury be not repaired, we shall do ourselves justice by arms. The *absolute* is that, which includes no condition; and by which we absolutely renounce the friendship and society of him, against whom we declare war. But every declaration of war, in whatever manner it be made, is of its own nature conditional;* for we ought always to be disposed to accept of a reasonable satisfaction, so soon as the enemy offers it; and on this account some writers reject this distinction of the declaration of war into conditional and absolute. But it may nevertheless be maintained, by supposing that he, against whom war is declared purely and simply, has already shown, that he had no design to spare us the necessity of taking up arms against him. So far therefore the declaration may, at least as to the form of it, be pure and simple, without any prejudice to the disposition, in which we ought always to be, if the enemy will hearken to reason. But this relates to the conclusion, rather than the commencement of a war; to the latter of which the distinction of conditional and absolute declarations properly belongs.

XX. As soon as war has been declared against a sovereign, it is presumed to be declared at the same time not only against all his subjects, who, in conjunction with him, form one moral person; but also against all those, who shall afterwards join him, and who, with respect to the principal enemy, are to be looked upon only as allies, or adherents.

* See above, numb. xviii.

XXI. As to the formalities, observed by different nations in declaring war they are all arbitrary in themselves. It is therefore a matter of indifference, whether the declaration be made by envoys, heralds, or letters; whether the sovereign in person, or to his subjects, provided the sovereign cannot plead ignorance of it.

XXII. With respect to the reasons why a solemn denunciation was required into such a war, as by the law of nations is called just; Grotius pretends it was, that the people might be assured, that the war was not undertaken by private authority, but by the consent of one or other of the nations, or of their sovereigns.

XXIII. But this reason of Grotius's seems to be insufficient; for are we more assured, that the war is made by public authority, when a herald for instance comes to declare it with certain ceremonies, than we should be, when we see an army upon our frontiers, commanded by a principal person of the state, and ready to enter our country? Might it not more easily happen, that one, or a few persons, should assume the character of herald, than that a single man should, of his own authority, raise an army, and march at the head of it to the frontiers, without the sovereign's knowledge?

XXIV. The truth is, the principal end of a declaration of war, or at least what has occasioned its institution, is to let all the world know, that there was just reason to take up arms, and to signify to the enemy himself, that it had been, and still was, in his power to avoid it. The declarations of war, and the manifestos published by princes, are marks of the due respect they have for each other, and for society in general, to whom by such means they give an account of their conduct, in order to obtain the public approbation. This appears particularly by the manner in which the Romans made those denunciations. The person sent for this purpose took the gods to witness, that the nation, against whom they had declared war, had acted unjustly, by refusing to comply with what law and justice required.

XXIV. Lastly it is to be observed, that we ought not to confound the *declaration* with the *publication* of war. This last is

made in favor of the subjects of the prince, who declares the war, and to inform them, that they are henceforth to look upon such a nation, as their enemy, and to take their measures accordingly.

CHAP. V.

General rules to know what is allowable in war.

I. IT is not enough, that a war be undertaken with justice, or for a lawful reason, and that we observe the other conditions hitherto mentioned; but we ought also, in the prosecution of it, to be directed by the principles of justice, and humanity, and not to carry the liberties of hostility beyond those bounds.

II. Grotius, in treating this subject, establishes three general rules, as so many principles, which serve to explain the extent of the rights of war.

III. The *first* is, that every thing, which has a connexion morally necessary with the end of the war, is permitted, and no more. For it would be to no purpose to have a right to do a thing, if we could not make use of the necessary means to bring it about. But, at the same time, it would not be just, that, under a pretence of defending our right, we should think every thing lawful, and proceed without any manner of necessity, to the last extremity.

IV. The *second rule.* The right we have against an enemy, and which we pursue by arms, ought not to be considered only with respect to the cause, which gave rise to the war; but also with respect to the fresh causes, which happen afterwards, during the prosecution of hostilities; just as in courts of law, one of the parties often acquires some new right before the end of the suit. This is the foundation of the right we have to act against those, who join our enemy, during the course of the war, whether they be his dependants or not.

V. The *third rule*, in fine, is, that there are a great many things, which, though otherwise unlawful, are yet permitted in

war, because they are inevitable consequences of it, and happen contrary to our intention, otherwise there would never be any way of making war without injustice; and the most innocent actions would be looked upon as criminal, since there are but few, from which some evil may not accidentally arise, contrary to the intention of the agent.

VI. Thus for example, in recovering our own, if just so much, as is precisely our due, cannot be had, we have a right to take more, but under the obligation of returning the value of the overplus. Hence we may attack a ship full of pirates, though there may be women, or children or other innocent persons on board we must needs be exposed to the danger of being involved in the ruin of those, whom we may justly destroy.

VII. This is the extent of the right we have against an enemy, in consequence of a state of war. By a state of war that of society is abolished; so that whoever declares himself my enemy gives me liberty to use violence against him *in infinitum*, or so far, as I please; and that not only till I have repulsed the danger, that threatened me, or till I have recovered, or forced from him, what he either unjustly deprived me of, or refused to pay me, but till I have further obliged him to give me good security for the future. It is not therefore always unjust to return a greater evil for a less.

VIII. But it is also to be observed, that though these maxims are true according to the strict right of war, yet the law of humanity fixes bounds to this right. That law directs us to consider, not only whether such or such acts of hostility may, without injury, be committed against an enemy; but also whether they are worthy of a humane or generous conqueror. Thus, so far as our own defence and future security will permit, we must moderate the evils, we inflict upon an enemy, by the principles of humanity.

IX. As to the manner of acting lawfully against an enemy, it is evident that violence and terror are the proper characteristics of war, and the method most commonly used. Yet it is also lawful to employ stratagem and artifice, provided it be without treachery, or breach of promise. Thus we may deceive an enemy by false news and fictitious relations, but we ought

never to violate our compacts or engagements with him, as we shall show more particularly hereafter.

X. By this we may judge of the right of stratagems; neither is it to be doubted but we may innocently use fraud and artifice, wherever it is lawful to have recourse to violence and force. The former means have even the advantage over the latter in this, that they are attended with less mischief, and preserve the lives of a great many innocent people.

XI. It is true some nations have rejected the use of stratagem and deceit in war; this however was not because they thought them unjust, but from a certain magnanimity, and often from a confidence in their own strength. The Romans, till very near the end of the second *Punic war*, thought it a point of honor to use no stratagem against their enemies.

XII. These are the principles by which we may judge to what degree the laws of hostility may be carried. To which let us add, that most nations have fixed no bounds to the rights which the law of nature gives us to act against an enemy; and the truth is, it is very difficult to determine precisely how far it is proper to extend acts of hostility even in the most legitimate wars, in defence of our persons, or for the reparation of damages, or for obtaining caution for the future; especially as those, who engage in war, give each other, by a kind of tacit agreement, an entire liberty to moderate or augment the violence of arms, and to exercise all acts of hostility, as each shall think proper.

XIII. And here it is to be observed, that though generals usually punish their soldiers, who have carried acts of hostility beyond the orders prescribed; yet this is not because they suppose the enemy is injured, but because it is necessary the general's orders should be obeyed, and that military discipline should be strictly observed.

XIV. It is also in consequence of these principles, that those who, in a just and solemn war, have pushed slaughter and plunder beyond what the law of nature permits, are not generally looked upon as murderers or robbers, nor punished as such. The custom of nations is to leave this point to the conscience of the

persons engaged in a war, rather than involve themselves in troublesome broils, by taking upon them to condemn either party.

XV. It may be even said, that this custom of nations is founded on the principles of the law of nature. Let us suppose, that, in the independence of the state of nature, thirty heads of families, inhabitants of the same country, should have entered into a league to attack or repulse a body, composed of other heads of families. I say, that neither during that war, nor after it is finished, those of the same country, or elsewhere, who had not joined the league on the either side, ought, or could punish, as murderers or robbers, any of the two parties, who should happen to fall into their hands.

XVI. They could not do it during the war, for that would be espousing the quarrel of one of the parties; and since they continued neuter in the beginning, they had clearly renounced the right of interfering with what should pass in the war. Much less could they intermeddle after the war is over; because, as it could not be ended without some accommodation or treaty of peace, the parties concerned were reciprocally discharged from all the evils, they had done to each other.

XVII. The good of society also requires, that we should follow these maxims. For if those, who continued neuter, had still been authorised to take cognizance of the acts of hostility, exercised in a foreign war, and consequently to punish such, as they believed to have committed any injustice, and to take up arms on that account; instead of one war, several might have arisen, and proved a source of broils and troubles. The more wars became frequent, the more necessary it was, for the tranquillity of mankind, not to espouse rashly other people's quarrels. The establishment of civil societies only rendered the practice of those rules more necessary; because acts of hostility then became, if not more frequent, at least more extensive, and attended with a greater number of evils.

XVIII. Lastly it is to be observed, that all acts of hostility, which can be lawfully committed against an enemy, may be exercised either in his territories, or in ours, in places subject to no jurisdiction, or at sea.

XIX. This does not hold good in a neutral country; that is

to say, whose sovereign has taken no share in the war. In such countries, we cannot lawfully exercise any acts of hostility; neither on the persons of the enemy, nor on their effects; not in virtue of any right of the enemy themselves, but from a just respect to the sovereign, who, having taken neither side, lays us under a necessity of respecting his jurisdiction, and of forbearing to commit any acts of violence in his territories. To this we may add, that the sovereign, by continuing neuter, has tacitly engaged not to suffer either party to commit any hostilities within his dominions.

CHAP. VI.

Of the rights, which war gives over the persons of the enemy, and of their extent and bounds.

I. WE shall now enter into the particulars of the different rights, which war gives over the enemy's person and goods; and to begin with the former.

1. It is certain, that we may lawfully kill an enemy; I say lawfully, not only according to the terms of external justice, which passes for such among all nations, but also according to internal justice, and the laws of conscience. Indeed the end of war necessarily requires, that we should have this power, otherwise it would be in vain to take up arms, and the law of nature would permit it to no purpose.

II. If we consulted only the custom of countries, and what Grotius calls the *law of nations*, this liberty of killing an enemy would extend very far; we might say that it had no bounds, and might even be exercised on innocent persons. However, though it be certain, that war is attended with numberless evils, which in themselves are acts of injustice, and real cruelty, but, under particular circumstances, ought rather to be considered as unavoidable misfortunes; it is nevertheless true, that the right, which war gives over the person and life of an enemy, has its bounds; and that there are measures to be observed, which cannot be innocently neglected.

III. In general we ought to be directed by the principles, established in the preceding chapter, in judging of the degress, to

which the liberties of war may be carried. The power we have of taking away the life of an enemy, is not therefore unlimited; for, if we can attain the legitimate end of war, that is, if we can defend our lives and properties, assert our rights, and recover satisfaction for damages sustained, and good sureties for the future, without taking away the life of the enemy, it is certain that justice and humanity directs us to forbear it, and not to shed human blood unnecessarily.

IV. It is true, in the application of these rules to particular cases, it is sometimes very difficult, not to say impossible, to fix precisely their proper extent and bounds; but it is certain at least, that we ought to come as near to them as possible, without prejudicing our real interests. Let us apply these principles to particular cases.

V. 1. It is often disputed, whether the right of killing an enemy regards only those, who are actually in arms; or whether it extends indifferently to all those in the enemy's country, subjects or foreigners? My answer is, that with respect to those, who are subjects, the point is incontestable. These are the principal enemies, and we may exercise all acts of hostility against them, by virtue of the state of war.

VI. As to strangers, those, who settle in the enemy's country after a war is begun, of which they had previous notice, may justly be looked upon as enemies, and treated as such. But in regard to such as went thither before the war, justice and humanity require that we should give them a reasonable time to retire; and if they neglect that opportunity, they are accounted enemies.

VII. 2. With regard to old men, women, and children, it is certain, that the right of war does not of itself require, that we should push hostilities so far, as to kill them; it is therefore a barbarous cruelty to do so. I say, that the end of war does not require this of itself; but if women for instance exercise acts of hostility, if, forgetting the weakness of their sex, they usurp the offices of men, and take up arms against us, then we are certainly excused in availing ourselves of the rights of war against them. It may also be said, that when the heat of action hurries the soldiers, as it were in spite of themselves, and

against the order of their superiors, to commit acts of inhumanity, as, for example, at the siege of a town, which, by an obstinate resistance, has irritated the troops; we ought to look upon those evils rather as misfortunes, and the unavoidable consequences of war, than as crimes, that deserve to be punished.

VIII. 3. We must reason almost in the same manner, with respect to prisoners of war. We cannot, generally speaking, put them to death, without being guilty of cruelty. I say generally speaking; for there may be cases of necessity, so pressing, that the care of our own preservation obliges us to proceed to extremities, which in any other circumstances would be absolutely criminal.

IX. In general even the laws of war require, that we should abstain from slaughter as much as possible, and not shed human blood without necessity. We ought not therefore directly and deliberately to kill prisoners of war, nor those, who ask quarter, or surrender themselves, much less old men, women, and children; in general we should spare all those, whose age and profession render them unfit to carry arms, and who have no other share in the war, than being in the enemy's country. It is easy also to conceive, that the rights of war do not extend so far, as to authorise the outrages, committed upon the honor and chastity of women; for this contributes nothing either to our defence or safety, or to the support of our rights; but only serves to satisfy the brutality of the soldiers.*

X. Again a question is here started, whether in cases, where it is lawful to kill the enemy, we may not, for that purpose, use all kinds of means indifferently? I answer, that to consider the thing in itself, and in an abstract manner, it is no matter which way we kill an enemy, whether by open force, or by fraud and stratagem; by the sword or by poison.

XI. It is however certain, that according to the idea and custom of civilized nations, it is looked upon as a base act of cowardice, not only to cause any poisonous draught to be given to the enemy, but also to poison wells, fountains, springs, rivers, arrows, darts, bullets, or other weapons used against him. Now it is sufficient, that this custom of looking on the use of poison

* Grotius, lib. iii. cap. iv. sect. 19.

as criminal is received among the nations at variance with us, to suppose we comply with it, when, in the beginning of the war, we do not declare, that we are at liberty to act otherwise, and leave it to our enemy's option to do the same.

XII. We may so much the more suppose this tacit agreement, as humanity and the interest of both parties equally require it; especially since wars are become so frequent, and are often undertaken on such slight occasions; and since the human mind, ingenious in inventing the means to hurt, has so greatly multiplied those, which are authorized by custom, and looked upon as honest. Besides it is beyond all doubt, that, when we can obtain the same end by milder and more humane measures, which preserve the lives of many, and particularly of those, in whose preservation human society is interested, humanity directs, that we should take this course.

XIII. These are therefore just precautions, which men ought to follow for their own advantage. It is for the common benefit of mankind, that dangers should not be augmented without end. In particular the public is interested in the preservation of the lives of kings, generals of armies, and other persons of the first rank, on whose safety that of societies generally depends. For if the lives of these persons are in greater safety, than those of others, when attacked only by arms; they are, on the other hand, more in danger of poison, &c. and they would be every day exposed to perish in this manner, if they were not protected by a regard to some sort of law, or established custom.

XIV. Let us add in fine, that all nations, that ever pretended to justice and generosity, have followed these maxims. The Roman consuls, in a letter they wrote to Pyrrhus, informing him, that one of his people had offered to poison him, said, that it was the interest of all nations not to set such examples.

XV. It is likewise disputed, whether we may lawfully send a person to assassinate an enemy? I answer, 1, that he, who for this purpose employs only some of his own people, may do it justly. When it is lawful to kill an enemy, it is no matter whether those employed are many or few in number. Six hundred Lacedæmonians, with Leonidas, entered the enemy's camp,

and went directly to the Persian king (Xerxes's) pavilion ; and a smaller number might certainly have done the same. The famous attempt of Mucius Scevola is commended by all antiquity ; and Porsenna himself, whose life was aimed at, acknowledged this to be an act of great valor.

XVI. But it is not so easy to determine whether we may for this purpose employ assassins, who, by undertaking this task, must be guilty of falshood and treason ; such as subjects with regard to their sovereign, and soldiers to their general. In this respect there are, in my opinion, two points to be distinguished. First whether we do any wrong, even to the enemy himself, against whom we employ traitors ; and secondly whether, supposing we do him no wrong, we commit nevertheless a bad action.

XVII. 3. With regard to the first question, to consider the thing itself, and according to the rigorous law of war, it seems, that, admitting the war to be just, no wrong is done to the enemy, whether we take advantage of the opportunity of a traitor, who freely offers himself, or whether we seek for it, and bring it about ourselves.

XVIII. The state of war, into which the enemy has put himself, and which it was in his own power to prevent, permits of itself every method, that can be used against him ; so that he has no reason to complain, whatever we do. Besides, we are no more obliged, strictly speaking, to respect the right he has over his subjects, and the fidelity they owe him as such, than their lives and fortunes, of which we may certainly deprive them by the right of war.

XIX. 4. And yet I believe, that this is not sufficient to render an assassination, under such circumstances, entirely innocent. A sovereign, who has the least tenderness of conscience, and is convinced of the justice of his cause, will not endeavour to find out perfidious methods to subdue his enemy, nor be so ready to embrace those, which may present themselves to him. The just confidence he has in the protection of heaven, the horror he conceives at the traitor's perfidy, the dread of becoming his accomplice, and of setting an example, which may fall again on himself and others, will make him despise and reject all the advantage, he might propose to himself from such means.

XX. 5. Let us also add, that such means cannot always be looked upon as entirely innocent, even with respect to the person, who employs the assassin. The state of hostility, which supersedes the intercourse of good offices, and authorizes to hurt, does not therefore dissolve all ties of humanity, nor remove our obligation to avoid, as much as possible, the giving room for some bad actions of the enemy, or his people ; especially those, who of themselves have had no part in the occasion of the war. Now every traitor certainly commits an action equally shameful and criminal.

XXI. 6. We must therefore conclude with Grotius, that we can never in conscience seduce or solicit the subjects of an enemy to commit treason, because that is positively and directly inducing them to perpetrate a henious crime, which otherwise would, in all probability, have been very remote from their thoughts.

XXII. 7. It is quite another thing, when we only take advantage of the occasion and the dispositions, we find in a person, who has no need to be solicited to commit treason. Here I think the infamy of the perfidy does not fall on him, who finds it entirely formed in the heart of the traitor ; especially if we consider, that, in this case between enemies, the thing, with respect to which we take advantage of the bad disposition of another, is of such a nature, that we may innocently and lawfully do it ourselves.

XXIII. 8. Be that as it may, for the reasons above alledged, we ought not to take advantage of a treason, which offered itself, except in an extraordinary case, and from a kind of necessity. And though the custom of several nations has nothing obligatory in itself, yet as the people, with whom we are at variance, look upon the very acceptance of a certain kind of perfidy to be unlawful, as that of assassinating one's prince or general, we are reasonably supposed to comply with it by a tacit consent.

XXIV. 9. Let us observe however, that the law of nations allows some difference between a fair and legitimate enemy, and rebels, pirates, or highwaymen. The most religious princes make no difficulty to propose even rewards to those, who will

betray such persons; and the public odium of all, which men of this stamp lie under, is the cause, that nobody thinks the measure hard, or blames the conduct of the prince in using every method to destroy them.

XXV. Lastly it is permitted to kill an enemy wherever we find him, except in a neutral country; for violent means are not suffered in a civilized society, where we ought to implore the assistance of the magistrate. In the time of the second *Punic war*,* seven Carthaginian galleys rode in a harbor, belonging to Syphax, who was then in peace both with the Romans and Carthaginians, and Scipio came that way with two galleys only. The Carthaginians immediately prepared to attack the Roman galleys, which they might easily have taken before they had entered the port; but, being forced by a strong wind into the harbor, before the Carthaginians had time to weigh anchor, they durst not attack them, because it was in a neutral prince's haven.

XXVI. Here it may be proper to say something concerning prisoners of war. In former times it was a custom, almost universally established, that those, who were made prisoners in a just and solemn war, whether they had surrendered themselves, or been taken by main force, became slaves the moment they were conducted into some place, dependant on the conqueror. And this right was exercised on all persons whatsoever, even on those, who happened unfortunately to be in the enemy's country, at the time the war suddenly broke out.

XXVII. Further, not only the prisoners themselves, but their posterity were reduced to the same condition; that is to say, those born of a woman after she had been made a slave.

XXVIII. The effects of such a slavery had no bounds; every thing was permitted to a master with respect to his slave, he had the power of life and death over him, and all, that the slave possessed, or could afterwards acquire, belonged of right to the master.

XXIX. There is some probability, that the reason and end, for which nations had established this custom of making slaves in war, was principally to induce the captors to abstain from

* Livy, lib. xxviii. cap. xvii. numb. 12, & seq.

from slaughter, from a view of the advantages they reaped from their slaves. Thus historians observe, that civil wars were more cruel than others, the general practice in that case being to put the prisoners to the sword, because they could not make slaves of them.

XXX. But Christian nations have generally agreed among themselves to abolish the custom of making their prisoners yield perpetual service to the conqueror. At present it is thought sufficient to keep those, that are taken in war, till their ransom is paid, the estimation of which depends on the will of the conqueror, unless there be a cartel, or agreement, by which it is fixed.

CHAP. VII.

Of the rights of war over the goods of an enemy.

I. AS to the goods of an enemy, it is certain that the state of war permits us to carry them off, to ravage, to spoil, or even entirely to destroy them; for, as Cicero very well observes,* *It is not contrary to the law of nature to plunder a person, whom we may lawfully kill.* And all those mischiefs, which the law of nations allows us to do to the enemy, by ravaging and wasting his lands and goods, are called spoil or plunder.

II. This right of spoil, or plunder, extends in general to all things belonging to the enemy; and the law of nations, properly so called, does not exempt even sacred things; that is, things consecrated either to the true God, or to false deities, and designed for the use of religion.

III. It is true the practices and customs of nations do not agree in this respect; some having permitted the plunder of things sacred and religious, and others having looked upon it as a profanation. But whatever the customs of different people may be, they can never constitute the primitive rule of right. In order therefore to be assured of the right of war in regard to this article, we must have recourse to the law of nature and nations.

* Cic. de Off. lib. iii. cap. vi.

IV. I observe then, that things sacred are not in themselves different from those we call profane. The former differ from the latter only by the religious use, to which they were intended. But this application or use does not invest the things with the quality of holy and sacred, as an intrinsic and indelible character.

V. The things thus consecrated still belong either to the state, or to the sovereign; and there is no reason why the prince, who has devoted them to religious purposes, may not afterwards apply them to the uses of life; for they, as well as all other public matters, are at his disposal.

VI. It is therefore a gross superstition to believe, that by the consecration, or destination of those things to the service of God, they change master, and belong no more to men, but are entirely withdrawn from human commerce, and the property of them is transferred to God. This is a dangerous superstition, owing to the ambition of the clergy.

VII. We must therefore consider sacred things as public goods, which belong to the state or sovereign. All the liberty, which the right of war gives over the goods belonging to the state, it also gives with respect to things called sacred. They may therefore be spoiled or wasted by the enemy, at least so far as is necessary and conducive to the design of the war; a limitation not at all peculiar to the plunder of sacred or religious things.

VIII. For, in general, it certainly is not lawful to plunder for plunder's sake, but it is just and innocent only, when it bears some relation to the design of the war; that is, when an advantage directly accrues from it to ourselves, by appropriating those goods, or at least, when by ravaging and destroying them, we in some measure weaken the enemy. It would be a madness equally brutal and criminal to do evil to another without a prospect of procuring some good, either directly or indirectly, to ourselves. It very seldom happens for instance, that after the taking of towns, there is any necessity for ruining temples, statues, or other public or private structures; we should therefore generally spare all these, as well as the tombs and sepulchres.

IX. It may however be observed, with respect to things sacred, that they who believe they contain something divine and inviolable, are really in the wrong to meddle with them at all; but this is only because they would then act against their conscience. And here, by the way, we may take notice of a reason, given to clear the Pagans of the imputation of sacrilege, even when they pillaged the temples of the gods, whom they acknowledged as such; which is, they imagined, that, when a city was taken, the guardian deities of that place quitted, at the same time, their temples and altars; especially after those deities, with every thing else, that was sacred, had been *invited out* with certain ceremonies. This is excellently described by Cocceius, in his dissertation *De Evocatione Sacrorum.*

X. The learned Grotius furnishes us with wise reflections on this subject, to persuade generals to behave with moderation in regard to plunder, from the advantages, which may accrue to themselves from such a conduct. And first he says, "by these "means we take from the enemy one of the most powerful "weapons, despair. Besides, by sparing the enemy's country, "we give room to believe, that we are pretty confident of vic-"tory; and clemency is of itself proper to soften and engage "the minds of men. All which may be proved by several "illustrious examples."

XI. Besides the power, which war gives to spoil and destroy the goods of an enemy, it likewise confers a right of acquiring, appropriating, and justly retaining the goods, we have taken from him, till the sum due to us is paid, including the expences of the war, in which his refusal of payment engaged us; and whatever else we think necessary to secure to ourselves, by way of caution, from the enemy.

XII. By the law of nations, not only he, who makes war for a just reason, but also every man, in a just war, acquires a property in what he takes from the enemy, and that without rule or measure, at least as to the external effects, with which the right of property is accompanied; that is to say, neutral nations ought to regard the two parties at war, as lawful proprietors of what they can take from each other by force of arms; the state of neutrality not permitting them to espouse either side, or to treat either of the contending powers as an usurper, pursuant to the principles already established.

XIII. This is generally true, as well with respect to moveables, as immoveables, so long as they are in the possession of him, who has acquired them by the right of war. But if from the hands of the conqueror they have passed into the power of a third, there is no reason, if they are immoveables, why the ancient owner should not try to recover them from that third, who holds them of the enemy, by what title soever; for he has as good a right against the new possessor, as against the enemy himself.

XIV. I said, *if they are immoveables*; for with respect to moveable effects, as they may easily be transferred by commerce into the hands of the subjects of a neutral state, often without their knowing that they were taken in war; the tranquillity of nations, the good of commerce, and even the state of neutrality require, that they should ever be reputed lawful prize, and the property of the person, of whom we hold them. But the case is otherwise with respect to immoveables, they are such in their own nature; and those to whom a state, which has taken them from an enemy, would resign them, cannot be ignorant of the manner, in which it possesses them.

XV. Here a question arises, when is it that things are said to be taken by the right of war, and justly deemed to belong to him, who is in possession of them? Grotius answers as a civilian, that a man is deemed to have taken moveable things by the right of war so soon, as they are secured from the pursuit of the enemy; or when he has made himself master of them in such a manner, that the first owner has lost all probable hopes of recovering them. Thus says he, at sea ships and other things are not said to be taken, till they are brought into some port or harbour belonging to us, or to some part of the sea, where our fleet rides; for it is only then, that the enemy begins to despair of recovering his property.

XVI. But, in my opinion, this manner of answering the question is altogether arbitrary. I see no reason why the prizes, taken from the enemy, should not become our property so soon, as they are taken. For when two nations are at war, both of them have all the requisites for the acquisition of property, at the very moment, they take a prize. They have an intention to acquire a title of just property, namely the right of war; and they are actually in possession of the thing. But if the principle, which Grotius supposes, were to be allowed, and the prizes taken from the enemy were not deemed a lawful acquisition, till they are transported to a place of safety, it would follow, that the booty, which a small number of soldiers has taken in war, may be retaken from them by a stronger body of troops of the same party, as still belonging to the enemy, if this stronger body of troops has attacked the other before they had conveyed their booty to a place of safety.

XVII. The latter circumstance is therefore altogether indifferent with respect to the present question. The greater or less difficulty the enemy may find, in recovering what has been taken from him, does not hinder the capture from actually belonging to the conqueror. Every enemy, as such, and so long as he continues such, retains the will to recover what the other has taken from him; and his present inability only reduces him to the necessity of waiting for a more favourable opportunity, which he still seeks and desires. Hence, with respect to him, the thing ought no more to be deemed taken, when in a place of safety, than when he is still in a condition of pursuing it. All, that can be said, is, that in the latter case, the possession of the conqueror is not so secure as in the former. The truth is, this distinction has been invented only to establish the rules of the right of postliminy, or the manner, in which the subjects of the state, from whom something has been taking in war, reenter upon their rights; rather than to determine the time of the acquisition of things, taken by one enemy from another.

XVIII. This seems to be the determination of the law of nature in regard to this point. Grotius observes also, that, by the customs established in his time, it is sufficient, that the prize has been twenty four hours in the enemy's possession, to account it lost. Thuanus, in the year 1595, gives us an example, that this custom was observed also by land. The town of Liere in Brabant having been taken and retaken the same day, the plunder was returned to the inhabitants, because it had not been twenty four hours in the hands of the enemy. But this rule was afterwards changed, with respect to the United Provinces; and

in general we may observe, that every sovereign has a right to establish such rules, in regard to this point, as he thinks proper, and to make what agreement he pleases with other powers. There have been several made at different times, between the Dutch and Spaniards, the Portuguese and the northern states.

XIX. Grotius applies these principles also to lands; they are not to be reputed lost so soon, as they are seized on; but for this effect they are to be secured with fortifications, that, without being forced, they cannot be repossessed by the first owner. But to this case we may also apply the reflections already made. A territory belongs to an enemy as soon, as he is master of it; and so long, as he continues in possession of it. The greater or less precaution to secure it, is nothing to the purpose.

XX. But be this as it may, it is to be observed, that, during the whole time of the war, the right we acquire over the things we have taken from the enemy, is of force only with respect to a third disinterested party; for the enemy himself may retake what he has lost, whenever he finds an opportunity, till by a treaty of peace he has renounced all his pretensions.

XXI. It is also certain, that in order to appropriate a thing by the right of war, it must belong to the enemy; for things belonging to people, who are neither his subjects, nor animated with the same spirit as he against us, cannot be taken by the right of war, even though they are found in the enemy's country. But if neutral strangers furnish our enemy with any thing, and that with a design to put him into a condition of hurting us, they may be looked upon as taking part with our foe, and their effects may consequently be taken by the right of war.

XXII. It is however to be observed, that in dubious cases it is always to be presumed, that what we find in the enemy's country, or in their ships, is deemed to belong to them; for besides that this presumption is very natural, were the contrary maxim to take place, it would lay a foundation for an infinite number of frauds. But this presumption however reasonable in itself, may be destroyed by contrary proofs.

XXIII. Neither do the ships of friends become lawful prizes, though some of the enemy's effects are found in them, unless it is done by the consent of the owners; who by that step seem

to violate the neutrality, or friendship, and give us a just right to treat them as an enemy.

XXIV. But in general we must observe, with respect to all these questions, that prudence and good policy require, that sovereigns should come to some agreement among themselves, in order to avoid the disputes, which may arise from those different cases.

XXV. Let us also take notice of a consequence of the principles here established; which is, that when we have taken things from the enemy, of which he had stripped another by the right of war, the former possessor cannot claim them.

XXVI. Another question is, whether things, taken in a public and solemn war, belong to the state, or to the individuals, who are members of it, or to those, who made the first seizure? I answer, that, as the right of war is lodged in the sovereign alone, and undertaken by his authority, every thing taken is originally and primarily acquired to him, whatever hands it first falls into.

XXVII. However, as the war is burdensome to the subjects, both equity and humanity require, that the sovereign should make them partake of the advantages, which may accrue from it. This may be done either by assigning to those, who may take the field, a certain pay from the public, or by sharing the booty among them. As to foreign troops, the prince is obliged to give them no more than their pay; what he allows them above that, is pure liberality.

XXVIII. Grotius, who examines this question at large, distinguishes between acts of hostility truly public, and private acts that are done upon the occasion of a public war. By the latter, according to him, private persons acquire to themselves principally, and directly, what they take from the enemy; whereas by the former, every thing taken belongs to the whole body of the people, or to the sovereign. But this decision has been justly criticised. As all public war is made by the authority of the people, or of their chief, it is from this source we must originally derive whatever right individuals may have to things taken in war. In this case there must always be an express or tacit consent of the sovereign.

XXIX It is also to be observed, that in treating this point

Grotius has confounded different things. The question does not relate to the law of nations, properly so called; for in whatever manner that law is understood, and whatever it be founded on, it ought to relate to the affairs in dispute between two different states. Now whether the booty belongs to the sovereign who makes war, or to the generals, or to the soldiers, or to other persons, that is nothing to the enemy, nor to other states. If what is taken be a good prize, it is of small consequence to the enemy, in whose, hands it remains. With regard to neutral people, it is sufficient that such of them, as have purchased, or any other way acquired a movable thing taken in war, cannot be molested, or prosecuted upon that account. The truth is, the regulations and customs, relating to this subject are not of public right; and their conformity, in many countries, implies no more than a civil right, common to several nations separately.

XXX. As for what in particular relates to the acquisition of *incorporeal things* by the right of war, it is to be observed, that they do not become our property, except we are in possession of the subject, in which they inhere. Now the subjects, they inhere in, are either things or persons. We often annex, for instance, to certain lands, rivers, ports, and towns, particular rights, which always follow them, whatever possessors they come to; or rather those, who possess them, are thereby invested with certain rights over other things and persons.

XXXI. The rights, which belong directly and immediately to persons, regard either other persons, or only certain things. Those, which are annexed to persons over other persons, are not obtained but with the consent of the persons themselves; who are supposed not to have given a power over them to any man promiscuously, but to some certain person. Thus, for instance, though a king happens to be made a prisoner of war, his enemies have not therefore acquired his kingdom with him.

XXXII. But with respect to personal rights over things, the bare seizure of the person of the enemy is not a sufficient title to the property of all his effects, unless we really take possession of those effects at the same time. This may be illustrated by the example given by Grotius and Puffendorf. Alexander the

Great, having destroyed the city of Thebes, made a present to the Thessalonians of an instrument, in which the latter acknowledged that they owed the Thebans a hundred talents.

XXXIII. These are the rights, which war gives us over the effects of the enemy. But Grotius pretends, that the right, by which we acquire things taken in war, is so proper and peculiar to a solemn war, declared in form, that it has no force in others, as in civil wars, &c. and that in the latter, in particular, there is no change of property, but in virtue of the sentence of a judge.

XXXIV. We may observe however on this point, that in most civil wars no common judge is acknowledged. If the state is monarchical, the dispute turns either upon the succession to the crown or upon a considerable part of the state's pretending, that the king has abused his power, in a manner, which authorizes the subject to take up arms against him.

XXXV. In the former case, the very nature of the cause, for which the war is undertaken, occasions the two parties of the state to form as it were two distinct bodies, till they come to agree upon a chief by some treaty. Hence with respect to the two parties, which were at war, it is on such a treaty, that the right depends, which persons may have to that, which has been taken on either side; and nothing hinders, but this right may be left on the same footing, and admitted to take place in the same manner, as in public wars between two states always distinct.

XXXVI. As to other nations, who were not concerned in the war, they have no more authority to examine the validity of the acquisitions, than they have to be judges of a war, made between two different states.

XXXVII. The other case, I mean an insurrection of a considerable part of the state against the reigning prince, can rarely happen, except when that prince has given room for it, either by tyranny, or by the violation of the fundamental laws of the kingdom. Thus the government is then dissolved, and the state is actually divided into two distinct and independent bodies; so that we are to form here the same judgment, as in the former case.

XXXVIII. For much stronger reasons does this take place in the civil wars of a republican state; in which the war, immediately of itself destroys the sovereignty, which subsists solely in the union of its members.

XXXIX. Grotius seems to have derived his ideas on this subject from the Roman laws; for these decreed, that prisoners taken in a civil war could not be reduced to slavery. This was, as Ulpian the civilian* remarks, because they looked upon a civil war not properly as a war, but as a *civil dessension*; for adds he a real war is made between those, who are enemies, and animated with a hostile spirit, which prompts them to endeavour the ruin of each other's state. Whereas in a civil war, however hurtful it often proves to the nation, the one party wants to save itself in one manner, and the other in another. Thus they are not enemies, and every person of the two parties remains always a citizen of the state so divided.

XL. But all this is a supposition, or *fiction* of *right*, which does not hinder what I have been saying from being true, and from taking place in general. And if among the Romans, a person could not appropriate to himself the prisoners taken in a civil war, as real slaves, this was in virtue of a particular law, received among them, and not on account of any defect of the conditions or formalities, which according to Grotius, are required by the law of nations, in a public or solemn war.

XLI. Lastly as to the wars of robbers and pirates, if they do not produce the effects abovementioned, nor give to those pirates a right of appropriating what they have taken, it is because they are robbers, and enemies to mankind, and consequently persons whose acts of violence are manifestly unjust, which authorizes all nations to treat them as enemies. Whereas, in other kinds of war, it is often difficult to judge on which side the right lies; so that the dispute continues, and ought to continue, undecided, with respect to those, who are unconcerned in the war.

* Lib. xxi. sect. 1. ff. de capt. & revers.

CHAP. VIII.

Of the right of sovereignty, acquired over the conquered.

I. BESIDES the effects of war, hitherto mentioned, there remains one more, the most important of all, and which we shall here consider; I mean the right of sovereignty, acquired over the conquered. We have already remarked, that when explaining the different ways of obtaining the supreme power, that in general it may be acquired either in a violent manner, and by the right of conquest, &c.

II. We must however observe, that war or conquest, considered in itself, is not properly the cause of this acquisition; that is, it is not the immediate origin of sovereignty. For the supreme power is founded on the tacit or express consent of the people, without which the state of war still subsists; for we cannot conceive how there can be an obligation to obey a person, to whom we have promised no subjection. War then is properly speaking, no more than the occasion of obtaining the sovereignty; as the conquered choose rather to submit to the victor, than to expose themselves to total destruction.

III. Besides, the acquisition of sovereignty by the right of conquest cannot, strictly speaking, pass for lawful, unless the war be just in itself, and the end proposed authorizes the conqueror to carry things to such extremity, as to acquire the supreme power over the vanquished; that is to say, either our enemy must have no other means of paying what he owes us, and of indemnifying us for the damages he has committed; or our own safety must absolutely oblige us to make him dependent on us. In such circumstances, it is certain, that the resistance of a vanquished enemy, authorizes us to push the acts of hostility against him so far, as to reduce him entirely under our power; and we may, without injustice, take advantage of the superiority of our arms to extort from him the consent, which he ought to give us of his own accord.

IV. These are the true principles, on which sovereignty by

the right of conquest is grounded. Hence we may conclude, that if, upon this foundation, we were to judge of the different acquisitions of this nature, few of them would be found well established; for it rarely happens, that the vanquished are reduced to such extremity, as not to be able to satisfy the just pretensions of the conqueror, otherwise than by submitting themselves to his dominion.

V. Let us however observe, that the interest and tranquillity of nations require, that we should moderate the rigor of the principles, above established. If he, who has constrained another, by the superiority of his arms, to submit to his dominion, had undertaken a war manifestly unjust, or if the pretext, on which it is founded, be visibly frivolous in the judgment of every reasonable person, I freely confess, that a sovereignty, acquired in such circumstances, would be unjust; and I see no reason, why the vanquished people should be more obliged to keep such a treaty, than a man who had fallen into the hands of robbers, would be under an obligation to pay, at their demand, the money he had promised them for the ransom of his life and liberty.

VI. But if the conqueror had undertaken a war for some specious reason, though perhaps at the bottom not strictly just, the common interest of mankind requires, that we should observe the engagements, we have entered into with him, though extorted by a terror in itself unjust; so long at least, as no new reason supervenes, which may lawfully exempt us from keeping our promise. For, as the law of nature directs, that societies, as well as individuals, should labor for their preservation, it obliges us, for this reason, not indeed to consider the acts of hostility committed by an unjust conqueror, as properly just, but to look upon the engagement of an express, or tacit treaty, as nevertheless valid. So that the vanquished cannot be released from observing it, under the pretext of its being caused by an unjust fear, as he might otherwise do, had he no regard to the advantages accruing from it to mankind.

VII. These considerations will have still a greater weight, if we suppose, that the conqueror, or his posterity, peaceably enjoy the sovereignty, which he has acquired by right of conquest, and besides, that he govern the vanquished like a humane and

generous prince. In such circumstances, a long possesion, accompanied with an equitable government, may legitimate a conquest, in its beginning and principle the most unjust.

VIII. There are modern civilians, who explain the thing somewhat differently. These maintain, that in a just war the victor acquires a full right of sovereignty over the vanquished, by the single title of conquest, independently of any convention; and even though the victor has otherwise obtained all the satisfaction and indemnification, he could require.

IX. The principal argument, these writers make use of, is, that otherwise the conqueror could not be certain of the peaceable possession of what he has taken, or forced the conquered to give him, for his just pretensions; since they might retake it from him, by the same right of war.

X. But this reason proves only, that the conqueror, who has taken possession of the enemy's country, may command in it while he holds it, and not resign it, till he has good security, that he shall obtain or possess, without hazard, what is necessary for the satisfaction and indemnity, which he has a right to exact by force. But the end of a just war does not always demand, that the conqueror should acquire an absolute and perpetual right of sovereignty over the conquered. It is only a favorable occasion of obtaining it; and for that purpose, there must always be an express or tacit consent of the vanquished. Otherwise, the state of war still subsisting, the sovereignty of the conqueror has no other title, than that of force, and lasts no longer, than the vanquished are unable to throw off the yoke.

XI. All that can be said, is, that neutral powers, purely because they are such, may and ought to look upon the conqueror, as the lawful possessor of the sovereignty, even though they should believe the war unjust on his side.

XII. The sovereignty, thus acquired by the right of war, is generally of the absolute kind. But sometimes the vanquished enter into certain conditions with the conqueror, which limit, in some measure the power he acquires over them. Be this as it may, it is certain, that no conquest ever authorises a prince to govern a people tyrannically; since, as we have before shown, the most absolute sovereignty gives no right to oppress

those, who have surrendered; for even the very intention of government, and the laws of nature, equally conspire to lay the conqueror under an obligation, of governing those, whom he has subdued, with moderation and equity.

XIII. There are therefore several precautions to be used in the exercise of the sovereignty, acquired over the vanquished; such for instance was that prudent moderation of the ancient Romans, who confounded, in some measure, the vanquished with the victors, by hastening to incorporate them with themselves, and to make them sharers of their liberty and advantages. A piece of policy doubly salutary; which, at the same time, that it rendered the condition of the vanquished more agreeable, considerably strengthened the power and empire of the Romans. "What would our empire now have been," says Seneca, "if the vanquished had not been intermixed with the "victors, by the effect of a sound policy?" Romulus, our founder," says Claudius in Tacitus, "was very wise with respect to "most of the people he subdued, by making those, who were "his enemies, the same day citizens."

XIV. Another moderation in victory consists in leaving to the conquered, either kings or people, the sovereignty, which they enjoyed, and not to change the form of their government. No better method can be taken to secure a conquest; and of this we have several examples in ancient history, especially in that of the Romans.

XV. But if the conqueror cannot, without danger to himself, grant all these advantages to the conquered; yet things may be so moderated, that some part of sovereignty shall be left to them, or to their kings. Even when we strip the vanquished entirely of their independency, we may still leave them their own laws, customs, and magistrates, in regard to their public and private affairs, of small importance.

XVI. We must not, above all things, deprive the vanquished of the exercise of their religion, unless they happen to be convinced of the truth of that, which the conquerer professes. This complaisance is not only of itself very agreeable to the vanquished, but the conqueror is absolutely obliged to it; and he cannot, without tyranny, oppress them in this article. Not that he

ought not to try to bring the vanquished to the true religion; but he should only use such means, as are proportioned to the nature of the thing, and to the end he has in view; and such, as have in themselves nothing violent, or contrary to humanity.

XVII. Let us observe lastly, that not only humanity, but prudence also, and even the interest of the victor, require that what we have been saying, with respect to a vanquished people should be strictly practised. It is an important maxim in politics, that, it is more difficult to keep, than to conquer provinces. Conquests demand no more than force, but justice must preserve them. These are the principal things to be observed, in respect to the different effects of war, and to the most essential questions relative to that subject. But as we have already had occasion to make mention of the article of neutrality, it will not be improper to say something more particular about it.

Of neutrality.

I. There is a *general* and a *particular neutrality*. The general is, when, without being allied to either of the two enemies at war, we are disposed to render to each the good offices, which every nation is naturally obliged to perform to other states.

II. The particular neutrality is, when we are particularly engaged to be neuter by some compact, either tacit or express.

III. The latter species of neutrality is either full and entire, when we behave alike towards both parties; or limited, as when we favour one side more than the other.

IV. We cannot lawfully constrain any person to enter into a particular neutrality; because every one is at liberty to make, or not to make, particular treaties, or alliances; or at least, they are not bound to do it, but by virtue of an imperfect obligation. But he, who has undertaken a just war, may oblige other nations to observe an exact and general neutrality; that is to say, not to favor his enemy more than himself.

V. We shall give here an abstract, as it were, of the duties of neutral nations. They are obliged equally to put in practice, towards both parties at war, the laws of nature, as well absolute

as conditional, whether these impose a perfect, or only an imperfect obligation.

VI. If they do the one any office of humanity, they ought not to refuse the like to the other, unless there be some manifest reason, which engages them to do something in favor of the one, which the other had otherwise no right to demand.

VII. But they are not obliged to do offices of humanity to one party, when they expose themselves to great danger, by refusing them to the other, who has as good a right to demand them.

VIII. They ought not to furnish either party with things, which serve to exercise acts of hostility,* unless they are authorized to do it by some particular engagement; and in regard to those, which are of no use in war, if they supply one side with them, they must also the other.

IX. They ought to use all their endeavours to bring matters to an accommodation, that the injured party may obtain satisisfaction, and the war be brought to speedy conclusion.

X. But if they be under any particular engagement, they should punctually fulfil it.

XI. On the other side, those, who are at war, must exactly observe, towards neutral nations, the laws of sociability, and not exercise any act of hostility against them, nor suffer their country to be plundered.

XII. They may however, in case of necessity, take possession of a place, situated in a neutral country; provided, that, as soon as the danger is over, they restore it to the right owner, and make him satisfaction for the damages, he has received.

CHAP. IX.

Of public treaties in general.

I. THE subject of public treaties constitutes a considerable part of the law of nations, and deserves to have its principles

* Those commodities, which serve to exercise acts of hostility, or are particularly useful in war, and in which the commerce of neutral with belligerent nations is forbidden by the laws of war, are denominated *contraband goods*. On this subject see Grotius de Jure Belli et Pacis, lib. III. cap. I. Also Vattel's Law of Nations, b. III. ch. VII.

and rules explained with some exactness. By public treaties, we mean such agreements as can be made only by public authority, or those, which sovereigns, considered as such, make with each other, concerning things, which directly concern the welfare of the state This is what distinguishes these agreements, not only from those, which individuals make with each other, but also from the contracts of kings in regard to their private affairs.

II. What we have before observed, concerning the necessity of introducing conventions betwixt private men, and the advantages arising from them, may be applied to nations and different states. Nations may, by means of treaties, unite themselves more particularly into a society, which shall reciprocally assure them of seasonable assistance, either for the necessaries and conveniences of life, or to provide for their greater security upon the breaking out of a war.

III. As this is the case, sovereigns are no less obliged, than individuals, inviolably to keep their word, and be faithful to their engagements. The law of nations renders this an indispensable duty; for it is evident, that, were it otherwise, not only public treaties would be useless to states, but moreover, that the violation of these would throw them into a state of diffidence and continual war; that is to say, into the most terrible situation. The obligation therefore of sovereigns, in this respect, is so much the stronger, as the violation of this duty has more dangerous consequences, which interest the public felicity. The sanctity of an oath, which generally accompanies solemn treaties, is an additional motive to engage princes to observe them with the utmost fidelity; and certainly nothing is more shameful for sovereigns, who so rigorously punish such of their subjects, as fail in their engagements, than to sport with treaties and public faith, and to look upon these only, as the means of deceiving each other.

The royal word ought therefore to be inviolable and sacred. But there is reason to apprehend, that if princes are not more attentive to this point, this expression will soon degenerate into an opposite sense, in the same manner as formerly *Carthaginian faith** was taken for perfidy.

* Punica fides.

IV. We must likewise observe, that the several principles, already established concerning the validity of conventions in general, agree to public treatles, as well as the contracts of individuals. In both, therefore, there must be a serious consent, properly declared, and exempt from *error*, *fraud*, and *violence*.

V. If treaties, made in those circumstances, be obligatory between the respective states or sovereigns, they are also binding with regard to the subjects of each prince in particular. They oblige as compacts between the contracting powers; but they have no force of laws with respect to the subjects considered as such; for it is evident, that two sovereigns, who conclude a treaty, lay their subjects thereby under an obligation of doing nothing contrary to it.

VI. There are several distinctions of public treaties; and 1. some turn simply on things, to which we were before obliged by the law of nature; and others superadd some particulars to the duties of natural law.

VII. Under the former head we may rank all those treaties, by which we are purely and simply engaged to do no injury to others, but, on the contrary, to perform all the duties of humanity towards them. Among civilized nations, who profess to follow the laws of nature, such treaties are not necessary. Duty alone is sufficient, without a formal engagement. But among the ancients, these treaties were thought expedient, the common opinion being, that they were obliged to observe the laws of humanity only to fellow subjects, and that they might consider all strangers as foes, and treat them as such, unless they had entered into some engagement to the contrary; and of this we have many instances in history. The profession of freebooter, or private, was no way shameful among several nations; and the word *hostis*, which the Romans used to express an enemy, originally signified no more than a stranger.

VIII. Under the second kind I comprehend all those compacts by which two nations enter into some new, or more particular obligation; as when they formally engage to things, to which they were not bound, but in virtue of an imperfect obligation, or even to which they were no ways before obliged.

IX. 2. Treaties, by which we engage to something more

than what we are obliged to, in virtue of the law of nature, are also of two kinds; some *equal*, others *unequal*.

3. Both are made either in time of war, or in full peace.

X. Equal treaties are those, contracted with an entire equality on both sides; that is to say, when not only the engagements and promises are equal on both sides, either purely and simply, or in proportion to the strength of each contracting party; but also, when they engage on the same footing; so that neither of the parties is in any respect inferior to the other.

XI. These treaties are made either with a view to *commerce*, or to confederacy in war, or in short to any other matters. With respect to commerce, for example, by stipulating, that the subjects, on either side, shall be free from all custom or toll, or that no more shall be demanded of them, than of the natives of the country, &c. Equal treaties, or leagues relating to war, are, when we stipulate for example, that each shall furnish the other an equal number of troops, ships, and other things; and this in all kinds of war, defensive as well as offensive, or in defensive only, &c. Lastly, treaties of equality may also turn upon any other matter; as when it is agreed, that one shall have no forts on the other's frontiers; that one shall not grant protection to the other's subjects, in some criminal cases, but order them to be siezed and sent back; that one shall not give the other's enemies passage through his country, and the like.

XII. What we have been saying sufficiently shows the meaning of unequal treaties. And these are, when the promises are either unequal, or such as lay harder conditions on one of the parties, than on the other. The inequality of the things stipulated is sometimes on the side of the most powerful confederate, as when he promises his assistance to the other, without requiring the like; and sometimes on the side of the inferior confederate, as when he engages to do more for the stronger, than the latter promises in return.

XIII. All the conditions of unequal treaties are not of the same nature; some there are, which, though burdensome to the inferior ally, yet leave the sovereignty intire; others on the contrary, include a diminution of the independence, and sovereignty of the inferior ally.

Thus, in the treaties between the Romans, and the Carthaginians, at the end of the second *Punic war*, it was stipulated, that the Carthaginians should not begin any war, without the consent of the Roman people; an article, which evidently diminished the sovereignty of Carthage, and made her dependent on Rome.

But the sovereignty of the inferior ally continues intire, though he engages, for example, to pay the other's army, to defray the expences of the war, to dismantle some towns, to give hostages, to look upon all those as friends or enemies, who are friends or enemies to the other, to have no forts, or strong holds in certain parts, to avoid sailing in particular seas, to acknowledge the preeminence of the other, and, upon occasion, to shew reverence and honor to his power and majesty, &c.

XIV. However, though these, and other similar conditions, do not diminish the sovereignty, it is certain that such treaties of inequality are often of so delicate a nature, as to require the greatest circumspection; and that if the prince, who is superior to the other in dignity, surpasses him also considerably in strength and power, it is to be feared, that the former will gradually acquire an absolute sovereignty over him, especially if the confederacy be perpetual.

XV. 4. Public treaties are also divided into *real* and *personal*. The latter are those, made with a prince purely in regard to his person, and expire with him. The former are such, as are made rather with the whole body of the state, than with the king or government, and which consequently outlive those, who made them and oblige their successors.

XVI. To know which of these two classes every treaty belongs to, the following rules may be laid down.

1. We must first attend to the form and phrase of the treaty, to its clauses, and the views proposed by the contracting parties. *Utrum autem in rem, an in personam factum est, non minus ex verbis, quam ex mente convenientium æstimandum est.** Thus, if there be an express clause, mentioning, that the treaty is perpetual, or for a certain number of years, or for the good of the state, or with the king for him and his successors, we may conclude, that the treaty is real.

* Leg. vii. sect. viii ff. de Pactis.

2. Every treaty, made with a republic, is in its own nature real, because the subject, with whom we contract it, is a thing permanent.

3. Though the government should happen to be changed from a republic into a monarchy, the treaty is still in force, because the body is still the same, and has only another chief.

4. We must however make an exception here, which is, when it appears that the preservation of the republican government was the true cause of the treaty; as when two republics enter into an alliance, by which they agree to assist one another, against such, as shall endeavour by force to alter their constitution, and deprive them of their liberties.

5. In case of doubt every public treaty, made with a king, ought to be deemed real, because in dubious cases, the king is supposed to act as chief, and for the good of the state.

6. Hence it follows, that as, after the change of a democracy into a monarchy, the treaty is still in force, in regard to the new sovereign; so if the government, from a monarchy, becomes a republic, the treaty made with the king does not expire, unless it was manifestly personal.

7. Every treaty of peace is real in its own nature, and ought to be kept by the successor; for so soon as the conditions of the treaty have been punctually fulfilled, the peace effectually effaces the injuries, which excited the war, and restores the nations to their natural situation.

8. If one of the confederates has fulfilled what the treaty obliged him to, and the other should die before he performs the engagements on his part, the successor of the deceased king is obliged either intirely to indemnify the other party for what he has performed, or to fulfil his predecessor's engagement.

9. But if nothing is executed on either part, or the performances on both sides are equal, then if the treaty tends directly to the personal advantage of the king, or his family, it is evident, that so soon as he dies, or his family is extinct, the treaty must also expire.

10. Lastly we must observe, that it is grown into a custom for successors to renew, at least in general terms, even the treaties manifestly acknowledged for real, that they may be the

more strongly bound to observe them, and may not think themselves dispensed from that obligation, under a pretext that they have different ideas concerning the interests of the state, from those of their predecessors.

XVII. Concerning treaties, or alliances, it is often disputed, whether they may be lawfully made with those, who do not profess the true religion? I answer, that by the law of nature there is no difficulty in this point. The right of making alliances is common to all men, and has nothing opposite to the principles of true religion; which is so far from condemning prudence and humanity, that it strongly recommends both.*

XVIII. To judge rightly of the causes, which put an end to public treaties, we must carefully attend to the rule of conventions in general.

1. A treaty concluded for a certain time, expires at the end of the term agreed on.

2. When a treaty is once expired, it must not be supposed to be tacitly renewed; for a new obligation is not easily presumed.

3. And therefore, if, after the treaty expires, some acts are continued, which seem conformable to the terms of the preceding alliance, they ought rather to be looked upon, as simple marks of friendship and benevolence, than as a tacit renovation of the treaty.

4. We must however make this exception, unless such acts intervene, as can bear no other construction, than that of a tacit renovation of the preceding compact. Thus, for example, if one ally has engaged to pay another a certain sum annually, and after the expiration of the term of the alliance, the same sum be paid the following year, the alliance is tacitly renewed for that year.

5. It is in the nature of all compacts in general, that when one of the parties violates the engagements, into which he had entered by treaty, the other is freed, and may refuse to stand to the agreement; for generally each article of the treaty has the force of a condition, the want of which renders it void.

6. This is generally the case, that is to say, when there is no

* See Grotius on war and peace, book ii. chap. xv. sect. 8, 9, 10 11, 12.

agreement otherwise; for sometimes this clause is inserted, that the violation of any single article of the treaty shall not break it intirely; to the end, that neither party should fly from their engagements for every slight offence. But he who, by the action of another, suffers any damage, ought to be indemnified in some shape or another.

XIX. None but the sovereign can make alliances and treaties, either by himself, or by his ministers. Treaties concluded by ministers oblige the sovereign and the state, only when the ministers have been duly authorized to make them, and have done nothing contrary to their orders and instructions. And here it may be observed, that among the Romans the word *fœdus, a public compact*, or *solemn agreement*, signified a treaty made by order of the sovereign power, or that had been afterwards ratified; but when public persons, or ministers of state, had promised something relating to the sovereign power, without advice and command from it, this was called *sponsio*, or a simple promise and engagement.

XX. In general it is certain, that when ministers, without the order of their sovereign, conclude a treaty concerning public affairs, the latter is not obliged to stand to it; and the minister, who has entered into the negociation without instructions, may be punished according to the exigency of the case. However there may be circumstances, in which a prince is obliged, either by the rules of prudence, or even those of justice and equity, to ratify a treaty, though concluded without his orders.

XXI. When a sovereign is informed of a treaty, made by one of his ministers without his orders, his *silence* alone does not imply a *ratification*, unless it be accompanied with some act, or other circumstance, which cannot well bear another explication. And much more, if the agreement was made upon condition of its being ratified by the sovereign, it is of no force till he has ratified it in a formal manner.

CHAP. X.

Of compacts made with an enemy.

I. AMONG public compacts, those, which suppose *a state of war*, and are made with an enemy, deserve particular attention. Of these there are two kinds; some, which do not put an end to the war, but only moderate or suspend the acts of hostility; and others, which end the war entirely. But before we consider these compacts in particular, let us inquire into the validity of them in general.

Whether we ought to keep our faith given to an enemy?

II. This question is certainly one of the most curious and important, belonging to the law of nations. Grotius and Puffendorf are not agreed in this point. The former maintains, that all compacts, made with an enemy, ought to be kept with an inviolable fidelity. But Puffendorf is somewhat dubious with respect to those compacts, which leave us in state of war, without a design to remove it. Let us therefore endeavour to establish some principles, by means of which we may determine with respect to these two opinions.

III. I observe, 1. That though war of itself destroys the state of society between two nations, we must not thence conclude that it is subjected to no law, and that all right and obligation are absolutely at an end between enemies.

2. On the contrary, every body grants that there is a right of war, obligatory of itself, between enemies, and which they cannot violate, without being defective in their duty. This is what we have proved before by showing, that there are just and unjust wars; and that, even in the justest, it is not allowable to push acts of hostility to the utmost extremity, but that we ought to keep within certain bounds; and consequently, that there are things *unjust* and *unlawful*, even with respect to an enemy. Since therefore war does not, of itself, subvert all the laws of society, we cannot from this alone conclude, that,

because two nations are at war with each other, they are dispensed from keeping their word, and from fulfilling the engagements they have made with each other, during the course of the war.

3. As war is in itself a very great evil, it is the common interest of nations not to deprive themselves voluntarily of the means, which prudence suggests to moderate the rigor, and to suspend the effects of it. On the contrary, it is their duty to endeavour to procure such means, and to make use of them upon occasion; so far at least, as the attainment of the lawful end of war will permit. Now there is nothing but *public faith*, that can procure to the parties, engaged in war, the liberty to take breath; nothing but this can secure to towns, that have surrendered, the several rights, which they have reserved by capitulation. What advantage would a nation gain, or rather, what is it they would not lose, if they were to have no regard to their faith, given to an enemy, and if they looked upon compacts, made in such circumstances, only as the means of circumventing one another? Surely it is not to be supposed that the law of nature approves of maxims so manifestly opposite to the common good of mankind. Besides, we ought never to wage war, merely for the sake of it, but only through necessity, in order to obtain a just and reasonable satisfaction, and a solid peace; whence it evidently follows, that the right of war between enemies cannot extend so far, as to render hostilities perpetual, and to create an invincible obstacle to the reestablishment of the public tranquillity.

4. And yet this would certainly be the consequence, if the law of nature did not lay us under an indispensable obligation of performing whatever agreement we have voluntarily made with the enemy during the war; whether these agreements tend only to suspend, or moderate acts of hostility, or whether they are designed to make them cease entirely, and to reestablish peace.

For in short there are only two ways of obtaining peace. The first is the total and entire destruction of our enemy; and the second is the entering into articles of treaty with him. If therefore treaties and compacts, made between enemies, were

not in themselves sacred and inviolable, there would be no other means of procuring a solid peace, than carrying on the war to the utmost extremity, and to the total ruin of our enemies But who does not see that a principle, which tends to the destruction of mankind, is directly contrary to the law of nature and nations, whose principal end is the preservation and happiness of human society?

5. There is no distinction, in this respect, between the different treaties, that we may enter into with an enemy; for the obligation, which the laws of nature lay upon us, to observe them inviolably relates as well to those, which do not put an end to the war, as to those, which tend to reestablish peace. There is no medium, and we must lay it down as a general rule, that all compacts with an enemy are obligatory, or that none of them are really such.

And indeed, if it were lawful for instance to break a solemn truce, and to detain, without any reason for it, people, to whom we had given passports, &c. what harm would there be in circumventing an enemy, under a pretext of treating of peace? When we enter into a negociation of this kind, we are still enemies; and it is properly but a kind of truce, which we agree to, in order to see if there be any means of coming to an accommodation. If the negociations prove unsuccessful, it is not then a new war, which we begin, since the differences, that occasioned our taking up arms, are not yet adjusted; we only continue the acts of hostility, which had been suspended for some time; so that we could no more rely on the enemy's sincerity, with respect to compacts, which tend to reestablish peace, than to those, whose end is only to suspend, or moderate acts of hostility. Thus distrusts would be continual, wars eternal, and a solid peace unattainable.

6. The more frequent unnecessary wars are become, through the avarice and ambition of sovereigns, the more a steady adherence to the principles, here established, is indispensably necessary for the interest of mankind. Cicero therefore justly affirms, that there is a right of war, which ought to be observ-

ed between the contending parties, and that the enemy retains certain rights, notwithstanding the war.*

Nor is it sufficient to say, as Puffendorf does, that it is a custom, which, among others, has obtained among civilized nations, out of particular respect to military bravery, that all compacts made with an enemy ought to be looked upon as valid. He should also have added, that this is an indispensable duty, that justice requires it, that it is not in the power of nations to establish things on another footing, and that they cannot justly deviate from the rules, which the law of nature prescribes, in this case, for their common advantage.

IV. It will not be difficult, by means of the principles here established, to answer the arguments, by which Puffendorf pretends to show, that all compacts, made with an enemy, are not of themselves obligatory. We shall be content with observing, 1. that those arguments prove nothing, because they prove too much, &c. and 2. all, that can be concluded from them, is, that we ought to act prudently, and take proper precautions before we pass our word, or enter into any engagement with an enemy; because mankind are apt to break their promises for their own interest, especially when they have to deal with people, whom they hate, or by whom they are hated.

V. But it will be said, is it not a principle of the law of nature, that all conventions and treaties, extorted by injustice and violence, are void of themselves; and consequently, that he, who has been forced to make them against his will, may lawfully break his word, if he thinks he can do it with safety?

Violence and force are the characteristics of war; and it is generally the conqueror, that obliges the vanquished to treat with him, and by the superiority of his arms, constrains them to accept the conditions he proposes to them, whether the war he has undertaken be just or not. How then is it possible, that the law of nature and nations should declare treaties, made in those circumstances, to be sacred and inviolable?

I answer, that however true the principle, on which this objection is founded, may be in itself, yet we cannot apply it, in all its extent, to the present question.

* *Est etiam jus bellicum; fidesque jurisjurandi sæpe cum hoste servanda.* Off. lib. iv cap. 29.

The common interest of mankind requires, that we should make some difference between promises, extorted by fear, among private persons, and those, to which a sovereign prince or people is constrained, by the superiority of the arms of a conqueror, whose pretensions were unjust. The law of nations then makes an exception here to the general rule of the law of nature, which disannuls conventions, extorted by unjust fear; or, in other words, the law of nations holds for just on both sides that dread or apprehension, which induces enemies to treat with each other, during the course of a war; for otherwise, there would be no method, either of moderating its fury, or of putting a final period to it, as we have already demonstrated.

VI. But, that nothing may be omitted, relating to this question, we shall add something for the further illustration of what we have been saying.

First then, it is necessary I think to distinguish here, whether he, who by the superiority of his arms has compelled his enemy to treat with him, had undertaken the war without reason; or whether he could alledge some specious pretext for it. If the conqueror had undertaken the war for some plausible reason, though perhaps unjust at bottom, then it is certainly the interest of mankind, that the law of nations should make us regard the treaties, concluded in such circumstances, as valid and obligatory; so that the conquered cannot refuse to observe them under a pretext, that they were extorted by an unjust fear.

But if we suppose, that the war was undertaken without reason, or if the motive alledged be manifestly frivolous or unjust, as Alexander's going to subdue remote nations, who had never heard of him, &c. as such a war is a down right robbery, I confess I do not think the vanquished more obliged to observe the treaty, to which they were compelled, than a man, fallen into the hands of theives, is bound to pay a sum of money, which he had promised them, as a ransom for his life or liberty.

VII. We must also add, as a very necessary remark, that even supposing the war was undertaken for some apparent and reasonable cause, if the treaty, which the conqueror imposes on the vanquished, includes some condition manifestly barbarous, and entirely contrary to humanity; we cannot, in those circumstances, deny the vanquished a right of receding from their engagement, and of beginning the war afresh, in order to free themselves, if they can, from the hard and inhuman conditions, to which they were subjected, by the abuse their enemy made of his victory, contrary to the laws of humanity. The justest war does not authorize the conqueror to keep no measures, or to use all liberties with respect to the vanquished; and he cannot reasonably complain of the breaking of a treaty, the conditions of which are both unjust in themselves, and full of barbarity and cruelty.

VIII. The Roman history furnishes us with an example to this purpose, which deserves our notice.

The Privernates had been several times subdued by the Romans, and as often revolted; but their city was at last retaken by the consul Plautius. In these distressed circumstances, they sent ambassadors to Rome to sue for peace. Upon a senator's asking them what punishment they thought they deserved; one of them answered, *that, which is due to men, who think themselves worthy of liberty.* Then the counsel asked them, whether there was any room to hope, that they would observe the peace, if their faults were pardoned? "The peace shall be "perpetual between us, replied the ambassador, and we shall "faithfully observe it, if the conditions you lay upon us are just "and reasonable; but if they are hard and dishonorable, the "peace will not be of long continuance, and we shall very soon "break it."

Though some of the senators were offended at this answer, yet most of them approved of it, and said, that it was worthy of a man, and of a man, who was born free; acknowledging therefore the rights of human nature, they cried out, that those alone deserved to be citizens of Rome, who esteemed nothing in comparison of liberty. Thus the very persons, who were at first threatened with punishment, were admitted to the privilege of citizens, and obtained the conditions they wanted; and the generous refusal of the Privernates to comply with the terms of a dishonorable treaty gained them the honor of being incorporat-

ed into a state, which at that time could boast of the bravest, and most virtuous subjects in the universe.*

Let us therefore conclude, that a due medium is to be observed; that we ought inviolably to observe treaties made with an enemy, and that no exception of an unjust fear should authorise us to break our promise, unless the war was a downright robbery, or the conditions imposed on us were highly unjust, and full of barbarity and cruelty.

IX. There is still another case, in which we may avoid the crime of perfidiousness, and yet not perform what we have promised to an enemy; which is, when a certain condition, supposed to be the basis of the engagement, is wanting. This is a consequence of the very nature of compacts; by this principle, the infidelity of one of the contracting parties sets the other at liberty; for, according to the common rule, all the articles of the same agreement are included one in the other, in the manner of a condition, as if a person were expressly to say, *I will do such or such a thing, provided you do so or so.*†

CHAP. XI.

Of compacts with an enemy, which do not put an end to the war.

I. AMONG those compacts, which leave us in a state of war, one of the principal is a *truce.*

A truce is an agreement, by which we engage to forbear all acts of hostility for some time, the war still continuing.

II. A truce is not therefore a peace, for the war continues. But if we agree, for instance, to certain contributions during the war, as these are granted only to prevent acts of hostility, they ought to cease during the truce; since, at that time, such acts are not lawful. And on the contrary, if it be agreed, that any particular thing is to take place in time of peace, the time of truce is not included.

III. As every truce leaves us in a state of war, it follows, that after the term is expired, there is no necessity that war

* Livy lib. viii, cap. xx, xxi.

† See above.

should be declared again; because we do not commence a new war, but only continue that, in which we were already engaged.

IV. This principle, that the war renewed after a truce is not a new war, may be applied to several other cases. In a treaty of peace, concluded between the bishop of Trent and the Venetians it was agreed, *that each party should be put in possession of what they enjoyed before the last war.*

In the beginning of this war the bishop had taken the castle from the Venetians, which they afterwards retook. The bishop refused to give it up, under a pretext that it had been retaken after several truces, which had been made during the course of that war. The dispute was evidently to be decided in favor of the Venetians.

V. There are truces of several kinds.

1. Sometimes, during the truces, the armies on both sides are in the field, and in motion; and these are generally limited to a few days. At other times the parties lay down their arms, and retire to their own countries; and in this case the truces are of longer duration.

2. There is a *general truce* for all the territories and dominions of both parties; and a *particular truce* restrained to particular places; as for example, by sea, and not by land &c.

3. Lastly there is an absolute, indeterminate, and general truce, and a truce limited and determined to certain things; for example to bury the dead, or, if a besieged town has obtained a truce only to be sheltered from certain attacks, or from particular acts of hostility, such as ravaging the country.

VI. We must also observe, that, strictly speaking, a truce can be made only by express agreement; and that it is very difficult to establish a treaty of this kind on the footing of a tacit convention, unless the facts are such in themselves, and in their circumstances, that they can be referred to no other principle, than to a sincere design of suspending acts of hostility for a time.

Thus, though for a time we abstain from acts of hostility, the enemy cannot from that alone conclude, that we have consented to a truce.

VII. The nature of a truce sufficiently shows what the effects of it are.

1. If the truce be general and absolute, all acts of hostility ought, generally speaking, to cease, both with respect to persons and things; but this should not hinder us, during the truce, to raise new troops, erect magazines, repair fortifications, &c. unless there be some formal convention to the contrary; for these are not in themselves acts of hostility, but defensive precautions, which may be taken in time of peace.

2. It is a violation of the truce to seize on any place, possessed by the enemy, by corrupting the garrison. It is also evident, that we cannot justly, during a truce, take possession of places deserted by the enemy, but really belonging to him, whether the garrison were withdrawn before or after the truce.

3. In consequence hereof, we must restore those things belonging to the enemy, which during the truce have accidentally fallen into our hands, even though they had been formerly our property.

4. During a truce, it is allowed to pass and repass from one place to another, but without any train or attendance, that may give umbrage.

VIII. And here it may be asked, whether they who, by any unexpected and inevitable accident, are found unfortunately in the enemy's country, at the expiration of a truce, can be detained prisoners, or ought to have the liberty of retiring? Grotius and Puffendorf maintain, that by the right of war we may detain them as prisoners; but Grotius adds, that it is certainly more humane and generous, not to insist on such a right. I am of opinion, that it is the consequence of a treaty of truce, that we should set such persons at liberty; for since, in virtue of that engagement, we are obliged to grant them free egress and regress during the time of the truce; we ought also to grant them the same permission after the truce is expired, if it appears manifestly that a superior force, or an unexpected accident, has hindered them from making use of it during the time agreed upon. Otherwise, as these accidents may happen every day, such a permission would often become a snare to make a great many people fall into the hands of the enemy. Such are the principal effects of an absolute and general truce.

IX. With regard to a particular truce, determined to certain things, its effects are limited by the particular nature of the agreement.

1. Thus, if a truce be granted only for burying the dead, we ought not to undertake any thing new, which may alter our situation; for instance, we cannot, during that time, retire into a more secure post, nor intrench ourselves, &c. for he, who has granted a short truce for the interment of the dead, has granted it for that purpose only, and there is no reason to extend it beyond the case agreed on. Hence it follows, that if he, to whom such a truce has been allowed, should take advantage of it to intrench himself, for example, or for some other use, the other party would have a right to prevent him by force. The former could not complain; for it never could be reasonably pretended, that a truce, which was allowed for the interment of the dead, and restrained to that single act, gives a right to undertake, and carry on any other thing undisturbed. The only obligation it imposes on the person, who has granted it, is, not forcibly to oppose the interment of the dead; though Puffendorf indeed is of a contrary opinion.*

2. It is in consequence of the same principles, that if we suppose that by the truce persons only, and not things, are protected from acts of hostility; in this case, if in order to defend our goods we wound any person, it is not a breach of the truce; for when the security of persons, on both sides is agreed on, the right of defending against pillage is also reserved. And hence the security of persons is not general, but only for those, who go and come without design to take any thing from the enemy, with whom such limited truce is made.

X. Every truce obliges the contracting parties from the moment the agreement is concluded. But the subjects on both sides are under no obligation in this respect, till the truce has been solemnly notified. Hence it follows, that, if before this notification the subjects commit any acts of hostility, or do something contrary to the truce, they are liable to no punishment. The powers however, who have concluded the truce,

* See the law of nature and nations book, viii. chap. vii. sect. 9.

ought to indemnify those, who have suffered and to restore things, as much as possible, to their former state.

XI. Lastly if the truce should happen to be violated on one side, the other is certainly at liberty to proceed to acts of hostility, without any new declaration. Yet when it is agreed, that he, who first breaks the truce, shall pay a certain fine, if he pays the fine, or suffers the penalty, the other has not a right to begin acts of hostility, before the expiration of the term. But besides the penalty stipulated, the injured party has a right to demand an indemnification of what he has suffered by the violation of the truce. It is to be observed however, that the actions of private persons do not break a truce, unless the sovereign has some hand in them, either by order, or by approbation; and he is supposed to approve what has been done, if he will neither punish, nor deliver up the offender, or if he refuses to restore the things taken during the cessation of arms.

XII. Safe conducts are also compacts made between enemies, and deserve to be considered. By a safe conduct we understand a privilege, granted to some persons of the enemy's party, without a cessation of arms; by which he has free passage and return, and is in no danger of being molested.

XIII. The several questions relating to safe conduct may be decided, either by the nature of the privilege granted, or by the general rules of right interpretation.

1. A safe conduct granted to soldiers extends not only to inferior officers, but also to those, who command in chief; because the natural and ordinary use of the word has determined it so.

2. If leave be given to go to a certain part, it implies one also to return, otherwise the former permission would be often useless. There may however be cases, in which the one does not imply the other.

3. He, who has had leave to come, has not, generally speaking, liberty to send another in his place; and, on the contrary, he, who has had a permision to send another person, cannot come himself; because these are two different things, and the permission ought to be naturally restrained to the person himself, to whom it was granted; for perhaps it would not have been given to another.

4. A father, who has obtained a passport, cannot take his son with him, nor a husband his wife.

5. As to servants, though not mentioned, it must be presumed allowable to take one or two, or even more, according to the quality of the person.

6. In a dubious case, and generally speaking, licence to pass freely does not cease by the death of him, who has granted it; the successor however may for good reasons revoke it; but in such a case the person, to whom the passport has been granted ought to have notice given him, and the necessary time allowed him for betaking himself to a place of safety.

7. A safe conduct, granted during pleasure, imports of itself a continuation of safe conduct, till expressly revoked; for otherwise the will is supposed to subsist still the same, whatever time may be elapsed; but such a safe conduct expires, if the person, who has given it, is no longer in the employment, in virtue of which he was empowered to grant such security.

XIV. The redemption of captives is also a compact often made, without putting an end to the war. The antient Romans were very backward in the ransoming of prisoners. Their practice was to examine whether those, who were taken by the enemy, had observed the laws of military disipline, and consequently, whether they deserved to be ransomed. But the side of rigour generally prevailed, as most advantageous to the republic.

XV. Yet in general it is more agreeable, both to the good of the state and to humanity, to ransom prisoners unless experience convinces us, that it is necessary to use that severity towards them, in order to prevent or redress greater evils, which would otherwise be unavoidable.

XVI. An agreement made for the ransom of a prisoner cannot be revoked, under a pretext, that he is found to be much richer than we imagined; for this circumstance, of the prisoner's being more or less rich, has no relation to the engagement; so that if his ransom were to be settled by his worth that condition should have been specified in the contract.

XVII. As prisoners of war are not now made slaves, the captor has a right to nothing, but what he actually takes; hence

money, or other things, which a prisoner has found means to conceal, certainly remain his property, and he may consequently make use of them to pay his ransom. The enemy cannot take possession of what they know nothing of; and the prisoner lies under no obligation to make a discovery of all his effects.

XVIII. There is also another question, whether the heir of a prisoner of war is obliged to pay the ransom, which the deceased had agreed upon? The answer is easy, in my opinion. If the prisoner died in captivity, the heir owes nothing, for the promise of the deceased was made upon condition, that he should be set at liberty; but if he was set at liberty before he died, the heir is certainly chargeable with the ransom.

XIX. One question more is whether a prisoner, who was released on condition of releasing another, is obliged to return to prison, if the other dies before he has obtained his releasement? I answer, that the released prisoner is not obliged to return into custody, for that was not stipulated in the agreement; neither is it just that he should enjoy his liberty for nothing. He must therefore give an indemnification, or pay the full value of what he could not perform.

CHAP. XII.

Of compacts made during the war, by subordinate powers, as generals of armies, or other commanders.

I. ALL, that has been hitherto said, concerning compacts between enemies, relates to those made by sovereign powers. But since princes do not always conclude such agreements themselves, we must now inquire into treaties made by generals, or other inferior commanders.

II. In order to know whether these engagements oblige the sovereign, the following principles will directs us.

1. Since every person may enter into an engagement, either by himself or by another, it is plain that the sovereign is bound by the compacts made by his ministers or officers, in consequence of the full powers and orders expressly given them.

2. He, who gives a man a certain power, is reasonably supposed to have given him whatever is a necessary consequence and appendage of that power, and without which it cannot be exercised. But he is not supposed to have granted him any thing further.

3. If he, who has had a commission to treat, has kept within the bounds of the power annexed to his office, though he acts contrary to his private instructions, the sovereign is to abide by what he has done; otherwise we could never depend on engagements contracted by proxy.

4. A prince is also obliged by the act of his ministers and officers, though done without his orders, if he has ratified the engagements they have made, either by an express consent, and then there is no difficulty, or in a tacit manner; that is to say, if, being informed of what has passed, he yet permits things to be done, or does them himself, which cannot be reasonably referred to any other cause, than the intention of executing the engagement of his ministers, though contracted without his participation.

5. The sovereign may also be obliged to execute the engagements contracted by his ministers without his orders, by the law of nature, which forbids us to enrich ourselves at another's expense. Equity requires, that in such circumstances we should exactly observe the conditions of the contract, though concluded by ministers, who had not full powers.

6. These are the general principles of natural equity, in virtue of which sovereigns may be more or less obliged to stand to the agreement of their ministers. But to what has been said, we must add this general exception, unless the laws and customs of the country have regulated it otherwise, and these be sufficiently known to the persons, with whom the agreement is made.

7. Lastly, if a public minister exceeds his commission, so that he cannot perform what he has promised, and his master is not obliged to it, he himself is certainly bound to indemnify the person, with whom he has treated. But if there should be any deceit on his part, he may be punished for it, and his person, or his goods, or both are liable to be seized, in order to make a recompense.

III. Let us apply these general principles to particular examples.

1. A commander in chief cannot enter into a treaty, that regards the causes and consequences of the war; for the power of making war, in whatever extent it has been given, does not imply the power of finishing it.

2. Neither does it belong to generals to grant truces for a considerable space of time; for 1. that does not necessarily depend on their commission. 2. The thing is of too great consequence to be left intirely to their discretion. 3. And lastly circumstances are not generally so pressing, as not to admit of time to consult the sovereign; which a general ought to do, both in duty and prudence, as much as possible, even with respect to things, which he has a power to transact of himself.

Much less therefore can generals conclude those kinds of truces, which withdraw all the appearance of war, and come very near a real peace.

3. With respect to truces of a short duration, it is certainly in the power of a general to make them; for example to bury the dead, &c.

IV. Lieutenant generals, or even inferior commanders, may also make particular truces, during the attack, for instance, of a body of the enemy intrenched, or in the siege of a town; for this being often very necessary, it is reasonably presumed, that such a power must needs be included in the extent of their commission.

V. But a question here arises, whether these particular truces oblige only the officers, who granted them, and the troops under their command, or whether they bind the other officers, and even the commander in chief? Grotius declares for the first opinion, though the second appears to me the best founded; for 1. since we suppose, that it is in consequence of the tacit consent of the sovereign, that such a truce has been granted by an inferior commander, no other officer, whether equal or superior, can break the agreement, without indirectly wounding the authority of the soveregin.

2. Besides, this would lay a foundation for fraud and distrusts, which might tend to render the use of truces, so necessary on several occasions, useless and impracticable.

VI. It does not belong to a general to release persons taken in war, nor to dispose of conquered sovereignties and lands.

VII. But it is certainly in the power of generals to grant, or leave things, which are not as yet actually possessed; because in war many cities, for example, and often men, surrender themselves, upon condition of preserving their lives and liberties, or sometimes their goods; concerning which the present circumstances do not commonly allow time sufficient to consult the sovereign. Inferior commanders ought also to have this right, concerning things within the extent of their commission.

VIII. In fine, by the principles here established, we may easily judge of the conduct of the Roman people, with respect to Bituitus king of the Arverni, and to the affair of the Caudine Forks.

CHAP. XIII.

Of compacts made with an enemy by private persons.

I. IT sometimes happens in war, that private persons, whether soldiers or others, make compacts with an enemy. Cicero justly remarks, that, if a private person, constrained by necessity, has promised any thing to the enemy, he ought religiously to keep his word.*

II. And inded all the principles hitherto established manifestly prove the justice and necessity of this duty. Besides, unless this be allowed, frequent obstacles would be put to liberty, and an occasion given for massacres, &c.

III. But, though these compacts are valid in themselves, yet it is evident, that no private person has a right to alienate public property; for this is not allowed even to generals of armies.

IV. With respect to the actions and effects of each individual, though the covenants made with the enemy on these affairs may sometimes be prejudicial to the state, they are binding nevertheless. Whatever tends to avoid a greater evil, though

* De Offic. lib. i. cap. x. ii.

detrimental in itself, ought to be considered as a public good; as for example, when we promise to pay certain contributions to prevent pillage, or the burning of places, &c. Even the laws of the state cannot without injustice, deprive individuals of the right of providing for their own safety, by imposing too burdensome an obligation on the subjects, intirely repugnant to nature and reason.

V. It is in consequence of these principles, that we think a captive bound to perform the promise he has made of returning to prison. Without this he would not be suffered to go home; and it is certainly better for him, and for the state, that he should have this permission for a time, than that he remain always in captivity. It was therefore to fulfil his duty, that Regulus returned to Carthage, and surrendered himself into the hands of the enemy.*

VI. We must judge, in like manner, of the promise, by which a prisoner engages *not to bear arms against the releaser*. In vain would it be objected, that such an engagement is contrary to the duty, we owe to our country. It is no way contrary to the duty of a good citizen to procure his liberty by promising to forbear a thing, which it is in the enemy's power to hinder. His country loses nothing by that, but rather gains; since a prisoner so long as he is not released, is as useless to it, as if he were really dead.

VII. If a prisoner has promised not to make his escape, he ought certainly to keep his word; even though he was in fetters when he made it. But if a person has given his word, on condition that he should not be confined in that manner, he may break it, if he be laid in irons.

VIII. But here some will ask, whether private men, upon refusing to perform what they have promised to the enemy, may be compelled to it by the sovereign? I answer, certainly; otherwise it would be to no purpose, that they were bound by a promise, if no one could compel them to perform it.

* Cicer. de Offic. lib. iii. cap. xxix.

CHAP. XIV.

Of public compacts, which put an end to war.

I. COMPACTS, which put an end to war, are either *principals* or *accessories*. Principals are those, which terminate the war, either by themselves, as a treaty of peace; or by a consequence of what has been agreed upon, as when the end of the war is referred to the decision of lot, to the success of a combat, or to the judgment of an arbitrator. Accessories are such, as are sometimes joined to the principal compacts in order to confirm them, and to render the execution of them more certain. Such are hostages, pledges, and guarantees.

II. We have already treated of single combats agreed on by both parties, and of arbitrators, considered as means of hindering or terminating a war; it now only remains, that we speak of treaties of peace.

III. The first question, which presents itself on this subject is whether compacts, which terminate a war, can be disannulled by the exception of an unjust fear, which has extorted them?

After the principles above established to show, that we ought to keep our faith given to an enemy, it is not necessary to prove this point again. Of all public conventions, treaties of peace are those, which a nation ought to look upon, as most sacred and inviolable, since nothing is of greater importance to the repose and tranquillity of mankind. As princes and nations have no common judge to take cognizance of their differences, and to decide concerning the justice of a war, we could never depend on a treaty of peace, if the exception of an unjust fear was in this case to be generally admitted I say *generally*, for when the injustice of the conditions of the peace is highly evident, and the unjust conqueror abuses his victory so far, as to impose the hardest, cruelest, and most intolerable conditions on the vanquished, the law of nations cannot authorise such treaties, nor lay an obligation on the vanquished tamely to submit to them. Let us also add, that, though the law

of nations ordains, that, except in the case here mentioned, treaties of peace are to be faithfully observed, and cannot be disannulled, under a pretext of an unjust constraint; it is nevertheless certain, that the conqueror cannot in conscience take the advantage of such a treaty, and that he is obliged by internal justice, to restore all that he has taken in an unjust war.

IV Another question is, whether a sovereign, or a state, is obliged to observe treaties of peace, which they have made with their rebellious subjects? I answer, 1. that when a sovereign has reduced rebellious subjects by force of arms, he may deal with them as he sees best. 2. But if he has entered into an accommodation with them, he is thereby supposed to have pardoned them what is past; so that he cannot lawfully refuse to keep his word, under a pretext that he has given it to rebellious subjects. This obligation is so much the more inviolable, as princes are apt to give the name of rebellion to a resistance, by which the subject only maintains his just rights, and opposes the violation of the most essential engagements of sovereigns. History furnishes but too many examples of this kind.

V. None but he, who has the power of making war, has a right to terminate it by a treaty of peace. In a word, this is an essential part of sovereignty. But can a king, who is a prisoner, make a treaty of peace, which shall be valid, and binding to a nation? I think not, for there is no probability, that the people would have conferred the supreme power upon one, with a right to exercise it, even in matters of the greatest importance, at a time, when he is not master of his own person. But with respect to contracts, which a king, though a prisoner, has made concerning what belongs to him in private, they are certainly valid, according to the principles established in the preceding chapter. But what shall we say of a king, who is in exile? If he has no dependence upon any person, it is undoubtedly in his power to make peace.

VI. To know for certainty what things a king can dispose of by a treaty of peace, we need only consider the nature of the sovereignty, and the manner, in which he possesses it.

1. In patrimonial kingdoms, considered in themselves, nothing hinders but that the monarch may alienate the sovereignty, or a part of it.

2. But princes, who hold the sovereignty only in an usufructuary manner, cannot by any treaty alienate it, either in whole or in part. To render such alienations valid, the consent of the body of the people, or of the states of the kingdom, is necessary.

3. With respect to the crown domains, or the goods of the kingdom, it is not generally in the power of the sovereign to alienate them.

4. With regard to the effects of private subjects, the sovereign, as such, has a transcendental or supereminent right over the goods and fortunes of private men; consequently he may give them up, as often as the public advantage or necessity requires it; but with this consideration, that the state ought to indemnify the subject for the loss he has sustained beyond his own proportion.

VII. For the better interpretation of the articles of a treaty of peace, we need only attend to the general rules of interpretation, and the intention of the contracting parties.

1. In all the treaties of peace, if there be no clause to the contrary, it is presumed that the parties hold themselves reciprocally discharged from all damages, occasioned by the war. Hence the clauses of general amnesty are only for the greater precaution.

2. But the debts between individuals, contracted before the war, and the payment of which could not be exacted during the war, are not to be accounted forgiven by the treaty of peace.

3. Unknown injuries, whether committed before or during the war, are supposed to be comprehended in the general terms, by which we forgive the enemy the evil he has done us.

4. Whatever has been taken since the conclusion of the peace must certainly be restored.

5. If the time be limited, in which the conditions of peace are to be performed, it must be interpreted in the strictest sense; so that, when it is expired, the least delay is inexcusable, unless it proceeds from a superior force, or it manifestly appears, that it is owing to no bad design.

6. It is lastly to be observed, that every treaty of peace is of

itself perpetual, and as it were eternal in its nature; that is to say, the parties are supposed to have agreed never to take up arms on account of the differences, which occasioned the war, and for the future to look upon them as intirely at an end.

VIII. It is also important to know, when a peace may be looked upon as broken?

1. Some distinguish between *breaking a peace* and *giving a new occasion of war*. To break a peace is to violate an article of the treaty; but to give a new occasion of war is to take up arms for a new reason not mentioned in the treaty.

2. But when we give a new occasion of war in this manner, the treaty is by such means indirectly broken, if we refuse to make satisfaction for the offence; for then the offended having a right to take up arms, and to treat the offender as an enemy, against whom every thing is lawful, he must also certainly dispense with observing the conditions of the peace, though the treaty has not been formally broken with respect to its tenor. Besides, this distinction cannot be much used at present; because treaties of peace are conceived in such a manner, as to include an engagement to live for the future in good friendship, in all respects. We must therefore conclude, that every new act of unjust hostility is an infringement of the peace.

3. As to those, who only repel force by force, they by no means break the peace.

4. When a peace is concluded with several allies of him, with whom the treaty has been made, the peace is not boken, if one of those allies takes up arms, unless it has been concluded on that footing. But this is what cannot be presumed, and certainly they, who thus invade us without the assistance of others, shall be considered as the breakers of the peace.

5. Acts of violence or hostility, which some subjects may commit of their own accord, cannot break the peace, except we suppose, that the sovereign approves them; and this is presumed, if he knows the fact, has power to punish it, and neglects to do so.

1. The peace is supposed to be broken, when, without a lawful reason, acts of hostility are committed, not only against the whole body of the state, but also against private persons; for

the end of a treaty of peace is, that every subject should, for the future, live in perfect security.

2. The peace is certainly broken by a contravention to the clear and express articles of the treaty. Some civilians however distinguish between the articles of *great importance*, and those of *small importance*. But this distinction is not only uncertain in itself, but also very difficult and delicate in its application. In general, all the articles of a treaty ought to be looked upon as important enough to be observed. We must however pay some regard to what is required by humanity, and rather pardon slight faults, than pursue the reparation of them by arms.

8. If one of the parties is, by an absolute necessity, reduced to an impossibility of performing his engagements, we are not for that to look upon the peace as broken; but the other party ought either to wait some time for the performance of what has been promised, if there be still any hope of it, or he may demand a reasonable equivalent.

9. Even when there is treachery on one side, it is certainly at the choice of the innocent party to let the peace subsist; and it would be ridiculous to pretend, that he, who first infringes the peace, can disengage himself from the obligation, which he lay under, by acting contrary to that very obligation.

IX. To treaties of peace, for the security of their execution, are sometimes joined hostages, pledges, and guarantees. Hostages are of several sorts; for they either give themselves voluntarily, or are given by order of the sovereign, or they are forcibly taken by the enemy. Nothing, for instance, is at present more common, than to carry off hostages for the security of contributions.

X. The sovereign may, in virtue of his authority, oblige some of his subjects to put themselves into the hands of the enemy as hostages; for if he has a right, when necessity requires it, to expose them to the danger of their lives, much more may he engage their corporal liberty. But on the other hand, the state ought certainly to indemnify the hostage for the losses they may have sustained for the good of the society.

XI. Hostages are demanded, and given, for the security of the execution of some engagement; therefore it is necessary, that

they should be retained, in such a manner as shall be judged proper, till the performance of what has been agreed on. Hence it follows that an hostage, who has made himself such voluntarily, or he, who has been given by the sovereign, cannot make his escape. Grotius however grants this liberty to the latter; but his opinion does not seem to be well founded; for either it was the intention of the state, that the hostage should not remain in the hands of the enemy; or the state had not the power of obliging the hostage to remain. The former is manifestly false, for otherwise the hostage could be no security, and the convention would be illusive. Nor is the latter more true; for if the prince, in virtue of his transcendental property, can expose the lives of the citizens, why may he not engage their liberty? Thus Grotius himself agrees, that the Romans were obliged to return Clelia to Porsenna. But the case is not precisely the same with respect to hostages, taken by the enemy; for these have a right to make their escape, so long as they have not given their word to the contrary.

XII. It is a question often controverted, whether he, to whom hostages are given can put them to death, in case the enemy do not perform their engagement? I answer, that hostages themselves cannot give the enemy any power over their lives, of which they are not master. As to the state, it has certainly the power of exposing the lives of the subjects, when the public good requires it. But in this case all, that the public good requires, is to engage the corporal liberty of the hostages; and they can no more be rendered responsible, at the peril of their lives, for the infidelity of the sovereign, than an innocent person can be treated as a criminal. Thus the state by no means engages the lives of hostages. He, to whom they are given, is supposed to receive them on these conditions; and though by the violation of the treaty they are at his mercy, it does not follow that he has a right to put them to death; he can only retain them as prisoners of war.

XIII. Hostages, given for a certain purpose, are free so soon, as that purpose is answered, and consequently cannot be detained upon any other account, for which no hostages were promised. But if we have broken our faith in any other case, or contracted a new debt, the hostages then may be detained, not as hostages, but in consequence of this rule of the law of nations, which authorizes us to detain the persons of subjects for the deeds of their sovereigns.

XIV. The query is, whether a hostage is at liberty by the death of the sovereign, who made the covenant? This depends on the nature of the treaty, for the security of which the hostage was given; that is to say, we must examine whether it be *personal* or *real*.

But if the hostage becomes successor to the prince, who gave him up, he is no longer obliged to be detained as an hostage, though the treaty be real; he ought only to put another in his place, whenever it is demanded. This case is supposed to be tacitly excepted; for it cannot be presumed, that a prince for example, who has given his own son and presumptive heir as an hostage, ever intended, that in case he should die, the state should be without its chief.

XV. Sometimes pledges are also given for the security of a treaty of peace; and as we have said that hostages may be detained for other debts, this may also be applied to pledges.

XVI. Another way in fine of securing peace is, when princes or states, especially those, who have been mediators of the peace, become guarantees, and engage their faith, that the articles shall be observed on both sides; which engagement of theirs implies an obligation of interposing their good offices, to obtain a reasonable satisfaction to the party injured contrary to treaty, and even of assisting him against the injurious aggressor.

CHAP. XV.

Of the right of ambassadors.

I. IT remains now for us to say something of ambassadors, and of the privileges, which the law of nations grants them. The subject naturally leads us to it, since it is by means of these ministers, that treaties are generally negociated and concluded.

II Nothing is more common than the maxim, which estab-

lishes that the persons of ambassadors are sacred and inviolable, and that they are under the protection of the law of nations. We cannot doubt that it is of the utmost importance to mankind in general, and to nations in particular, not only to put an end to wars and disputes, but also to establish and maintain commerce and friendship with each other. Now as ambassadors are necessary to procure these advantages, it follows that God, who certainly commands every thing, that contributes to the preservation and happiness of society, cannot but forbid the doing any injury to those persons; but, on the contrary, he orders we should grant them all the security and privileges, which the design and nature of their employment require.

III. Before we enter into the application of the privileges, which the law of nations grants to ambassadors, we must observe with Grotius, that they belong only to ambassadors sent by sovereign powers to each other. For as to deputies sent by cities or provinces to their own sovereigns, it is not by the law of nations, that we must judge of their privileges, but by the civil law of the country. In a word, the privileges of ambassadors regard only foreigners; that is to say such, as have no dependence on us.

Nothing then hinders an inferior ally from having a right to send ambassadors to a superior ally; for in the case of an unequal alliance, the inferior does not cease to be independent.

It is a question, whether a king, vanquished in war and stript of his kingdom, has a right of sending ambassadors? But indeed this question is useless with respect to the conqueror, who will not even so much as think, whether he ought to receive ambassadors from a person, whom he has deprived of his kingdom. With regard to other powers, if the conqueror has entered into the war for reasons manifestly unjust, they ought still to acknowledge that person for the true king, who really is so, so long as they can do it without some great inconveniency; consequently they cannot refuse to receive his ambassadors.

But in civil wars the case is extraordinary; for then necessity sometimes makes way for this right, so as to receive ambassadors on both sides. The same nation, in that case, is for a time accounted two distinct bodies of people. But pirates and

robbers, that do not constitute a settled government, can have no right of nations belonging to them, nor consequently that of sending ambassadors, unless they have obtained it by a treaty, which has sometimes happened.

IV. The ancients did not distinguish different sorts of persons sent by one power to another; the Romans called them all *legati* or *oratores*. At present there are various titles given to these public ministers. But the employment is in the main the same; and the several distinctions are founded rather on the greater or less splendor, with which they support their dignity, and on the greatness or smallness of their salary, than on any other reason derived from their character.

V. The most common distinction of ambassadors, at present, is into *extraordinary* and *ordinary*. This difference was entirely unkown to the ancients. With them all ambassadors were extraordinary, that is to say, charged with only a particular negociation; whereas the ordinary ambassadors are those, who reside among foreign nations, to transact all kinds of political concerns, and even to observe what passes in the respective courts.

The situation of things in Europe, since the destruction of the Roman empire, the different sovereignties and republics, that have been erected, together with the increase of trade, have rendered these ordinary ambassadors necessary. Hence several historians justly observe, that the Turks, who keep no ministers in foreign countries, act very impoliticly; for as they receive their news only by Jewish or Armenian merchants, they do not generally hear of things till very late, or their informations are bad, which often makes them take imprudent measures.

VI. Grotius observes, that there are two principal maxims of the law of nations, concerning ambassadors. The first, *that we ought to admit them*; the second, *that their persons are sacred and inviolable.*

VII. With regard to the first of these maxims, we must observe, that the obligation of admitting ambassadors is founded in general on the principles of humanity; for, as all nations form a kind of society among themselves, and consequently ought to assist each other by a mutual intercourse of good offices, the use of ambassadors becomes necessary between them

for that very reason. It is therefore a rule of the law of nations, that we ought to admit ambassadors, and to reject none without a just cause.

VIII. But though we are obliged to admit ambassadors, it is only a bare duty of humanity, which produces but an imperfect obligation. So that a simple refusal cannot be regarded as an injurious act, sufficient to lay a just foundation for a war. Besides, the obligation to admit ambassadors regards as well those, sent to us by an enemy, as those who come from an allied power. It is the duty of princes, who are at war, to seek the means of re-establishing a just and reasonable peace; and they cannot obtain it, unless they are disposed to listen to the proposals, that may be made on each side; which cannot be so well negociated, as by employing ambassadors or ministers. The same duty of humanity also obliges neutral, or indifferent princes, to afford a passage through their territories to ambassadors sent by other powers.

IX. I mentioned, that we ought not, without a just cause, refuse admittance to an ambassador; for it is possible, that we may have very good reasons to reject him; for example, if his master has already imposed upon us under pretext of an embassy, and we have just reason to suspect the like fraud; if the prince, by whom the ambassador is sent, has been guilty of treachery, or of some other heinous crime against us; or, in fine, if we are sure that, under the pretext of negociating, the ambassador is sent only as a spy, to pry into our affairs, and to sow the seeds of sedition.

Thus, in the retreat of the ten thousand, the history of which has been written by Xenophon, the generals resolved, that, so long as they were in the enemy's country, they would receive no heralds; and what moved them to this resolution was their having found, that the persons, who had been sent among them, under the pretence of embassy, came really to spy into their affairs and to corrupt the soldiers.

It may also be a just reason for refusing admittance to an ambassador, or envoy from an allied power, that, by admitting him, we are likely to give distrust to some other power, with whom it is proper we should maintain a good understanding.

Lastly, the person or character of the ambassador himself may furnish just reasons for our not admitting him. This is sufficient concerning the maxim relating to the admittance of ambassadors.

X. With regard to the other rule of the law of nations, which directs that the persons of ambassadors be looked upon as sacred and inviolable, it is a little more difficult to decide the several questions relating to it.

1. When we say that the law of nations forbids any violence to ambassadors, either by word or action, we do not by this give any particular privilege to those ministers; for this is no more than what every man has a right to by the law of nature; a right, that his life, his honor, and his property, be perfectly secure.

2. But when we add, that the persons of ambassadors are sacred and inviolable by the law of nations, we attribute some prerogatives and privileges to them, which are not due to private persons, &c

3. When we say that the person of an ambassador is sacred, this signifies no more, than that we inflict a severer punishment on those, who offer violence to an ambassador, than on such, as commit an injury or insult to private persons; and the character of ambassadors is the reason of our inflicting so different a punishment for the same kind of offence.

4. Lastly, the reason, why we call the persons of ambassadors sacred, is because they are not subject to the jurisdiction of the sovereign, to whom they are deputed, either in their persons, their retinue, or effects; so that we cannot proceed against them, according to the ordinary course of justice; and it is in this that their privileges chiefly consist.

XI. The foundation of these privileges, which the law of nations grants to ambassadors, is, that, as an ambassador represents the person of his master, he ought of course to enjoy all the privileges and rights, which his master himself, as a sovereign, would have, were he to come into the states of another prince, in order to transact his own affairs, to negociate, for instance, or conclude a treaty, or an alliance; to regulate some branch of commerce, and other things of a similar nature, &c. Now when a sovereign goes into a foreign country, we cannot

imagine, that he loses his character and independence, and that he becomes subject to the prince, whose territories he visits. On the contrary, he ought to continue as he was before, equal and independent of the jurisdiction of the prince, whose territories he enters; and the latter receives him on the same footing, as he would choose to be received himself, if he went into the other's dominions. Now we must grant the ambassador the same prerogative and immunities, in consequence of his representative character.

The very end and design of embassies render these privileges of ambassadors necessary; for it is certain, that, if an ambassador can treat with the prince, to whom he is sent, with a full independence, he will be much better qualified to perform his duty, and serve his master effectually, than if he were subject to a foreign jurisdiction, or if he and his retinue could be consigned over to justice, and his goods arrested and seized, &c. Hence it is, that all nations have, in favor of ambassadors, made a very just exception to the general custom, which requires, that people, who reside in a foreign prince's dominions, shall be subject to that prince's laws.

XII. These principles being supposed, I affirm,

1. That there is no difficulty with respect to ambassadors, who are deputed to a power, with whom their master is at peace, and have injured no man. The most evident maxims of the law of nature require they should be perfectly secure. So that, if we affront or insult such a minister, in any manner whatsoever, we give his master just reason for declaring war. Of this king David furnishes us with an example.*

2. With regard to ambassadors, who come from an enemy, and have done no harm before they are admitted, their safety depends entirely on the laws of humanity; for an enemy, as such, has a right to annoy his enemy. Thus, so long as there is no particular agreement upon this article, we are obliged to spare the ambassador of an enemy, only in virtue of the laws of humanity, which we ought always to respect, and which oblige us to have a regard for every thing tending to the preservation of order and tranquillity.

* 2 Sam. chap. x.

3. But when we have promised to admit, or have actually admitted the ambassador of an enemy, we have thereby manifestly engaged to procure him intire security, so long as he behaves well. We must not even except heralds, who are sent to declare war, provided they do it in an inoffensive manner.

4. With regard to ambassadors, who have rendered themselves culpable, either they have done the injury of their own head, or by their master's order.

If they have done it of their own head, they forfeit their right to security, and to the enjoyment of their privileges, when their crime is manifest and henious; for no ambassador whatever can pretend to more privileges, than his master would have in the same case; now such a crime would not be pardoned in the master.

By *heinous crimes* we here mean such, as tend to disturb the state, or to destroy the subjects of the prince, to whom the ambassador is deputed, or to do them some considerable prejudice.

When the crime directly affects the state, whether the ambassador has actually used violence or not, that is to say, whether he has stirred up the subjects to sedition, or conspired himself against the government, or favored the plot; or whether he has taken arms with the rebels or the enemy, or engaged his attendants so to do, &c. we may be revenged on him, even by killing him, not as a subject, but as an enemy; for his master himself would have no reason to expect better treatment. And the end of embassies, instituted no doubt for the general good of nations, does not require that we should grant to an ambassador, who first violates the law of nations, the privileges, which that law allows to foreign ministers. If such an ambassador makes his escape, his master is obliged to deliver him up, when demanded.

But if the crime, however henious or manifest, affects only a private person, the ambassador is not for that alone to be reputed an enemy to the prince or state. Suppose his master had committed a crime of the same nature, we ought to demand satisfaction of him, and not take up arms against him till he has refused it; so the same reason of equity directs, that the prince, at whose court the ambassador has committed such a crime, should send him back to his master, desiring him either

to deliver him up, or to punish him; for to keep him in prison till his master shall recal him, in order to punish him, or declare that he has abandoned him, would be to testify some distrust of the justice of his master, and by that means affront him in some measure, because he is still represented by the ambassador.

5. But if the crime be committed by the master's order, it would certainly be imprudence to send the ambassador back; since there is just reason to believe, that the prince, who ordered the commission of the crime, will hardly surrender, or punish the criminal. We may therefore, in this case, secure the person of the ambassador, till the master shall repair the injury done both by his ambassador, and himself. In regard to those, who do not represent the person of the prince, such as common messengers, trumpets, &c. we may kill them on the spot, if they come to insult a prince by order of their master.

But nothing is more absurd than what some maintain, namely, that all the evil done by ambassadors, by order of their master, ought to be imputed entirely to the latter. Were it so, ambassadors would have more privilege in the territories of another prince, than their master himself, should he appear there; and on the the other hand, the sovereign of the country would have less power in his own dominions, than a master of a family has in his own house.

In a word, the security of ambassadors ought to be understood in such a manner, as to imply nothing contrary to the security of the powers to whom they are sent, and who neither would, nor could recieve them upon other terms. Now it is plain, that ambassadors will be less bold in undertaking any thing against the sovereign, or against the members of a foreign state, if they are apprehensive, that in case of treason, or some other henious crimes, the government of that country can call them to an account for it, than if they had nothing to apprehend but correction from their master.

6. When the ambassador himself has committed a crime, it is not lawful to use him ill, or to kill him by the law of *retaliation* or *reprisals*; for by admitting him under that character, we have renounced our right to any such revenge.

In vain would it be to object a great many instances of this kind of revenge, which are mentioned in history; for historians not only relate just and lawful actions, but also divers things done contrary to justice in the heat of anger, by the influence of some irregular and tumultuous passion.

7. What has been hitherto said of the rights of ambassadors, ought to be applied to their domestics, and all their retinue. If any of the ambassador's domestics has done an injury, we may desire his master to deliver him up. If he does not comply, he makes himself accessary to his crime, and in this case we have a right to proceed against him in the same manner, as if he had committed the act himself.

An ambassador however cannot punish his own domestics; for as this is not conducive to the end of his employment, there is no reason to presume, that his master has given it him.

8. With respect to the effects of a foreign minister, we can neither seize them for payment, nor for security, in the way of justice; for this would suppose, that he was subject to the jurisdiction of the sovereign, at whose court he resides. But if he refuses to pay his debts, we ought, after giving him notice, to apply to his master, and if the latter refuses to do us justice, we may seize the effects of the ambassador.

9. Lastly, as to the right of asylums and protections, it is by no means a consequence of the nature and end of embassies. However, if it is once granted to the ambassadors of a certain power, nothing but the welfare of the state, authorizes us to revoke it.

Neither ought we, without good reasons, to refuse ambassadors the other sorts of rights and privileges, which are established by the common consent of sovereigns; for this would be a kind of affront to them.

END OF THE FOURTH AND LAST PART.